REPORTS

in the Court of ~~Cam Scac 4~~

EXCHEQUER,

Beginning in the third, and ending in the ninth year of the Raign of the late ~~Ph & M 4~~ 17

KING JAMES.

By the Honourable ~~J 14 18~~

RICHARD LANE

Late of the Middle Temple, an eminent Professor of the Law, sometime Atturney Generall to the late

PRINCE CHARLES.

Being the first Collections in that Court hitherto extant.

Containing severall Cases of Informations upon Intrusion, touching the *Kings* Prerogative, Revenue and Government, with divers Incident Resolutions of Publique Concernment in Points of

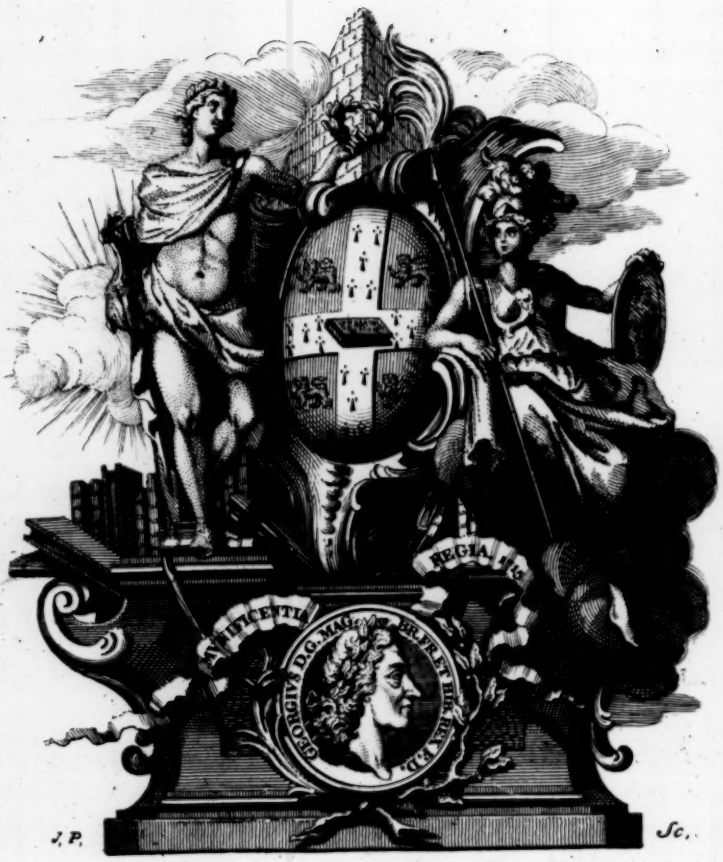
L A W.

With two exact Alphabeticall Tables, the one of the Names of the Cases, the other of the Principall Matters contained in this Book.

LONDON,

Printed for *W. Lee*, *D. Pakeman*, and *G. Bedell*, and are to be sold at their Shops in *Fleetstreet*, 1657.

REPORTS



Printed for W. Lee, D. Pakeman, and G. Bedell, and are to be
sold at their Shops in Fleetstreet, 1765.

AN ALPHABETICALL

TABLE

of the names of the Cases contained in this

BOOKE.

A.

Airie *against* Alcock, P. 33
Arden *against* Darcie, 68
Sir Anthony Ashleys case, 83

B.

Bret *against* Johnson, 1
Bates in an information, 22
Bently *and others against* Leigh, 71
Brown *Sir* Henry, 81, 86
Bromleys *case*, 90
Brockenburies case, 91
Beckets *case touching reuersancy*, 91
Bents *case*, 96
Beckets *case*, 118

C.

Catesbies *case*, 37
Cumberland, the Earles *case*, 39
Calvert *against* Kitchin *and* Parkingson *in Simony*, 71, 100
Carew *against* Broughton, 79
Clare *Sir* Henry, 96
Clerke *against* Rutland, 113
Chamberlains *case*, 117

D.

Dennis *against* Drake, 20
Dimock *Sir* Edward in an information for intrusion, 31, 35, 60
Doille *against* Jolliffe, 48, 52

E.

Ewer *against* Moile, 83
Edwards *case*, 98

F.

Forteſcue, *see* Isabell, 91

G.

Gibsons *Case*, 90
Gooches *Case*, 99

H.

Huddlestone *and* Hills *case*, 16
Halseyes *Case of Recusancy*, 104

I.

INformation, *See* Page, 19
Information, *See* Page, 21
Information, *see* Bates, 23
Information, *see* Dimock, 31
Jacksons *Case*, 60
Isabell Fortescues case, 91

K.

THe King against the Earle of *Nottingham* and others, 42
Kent *and* Kelway, 70

L.

Littleton *Sir* John, 56
Levison *against* Kirke, 65
Leazure *Sir* Stephen, 100

M.

Maior of *Lincolnshirs* Case, 16
Mary Reps *against* Babham, 17

N.

NOrton *Sir* Daniel, 74

O.

OVerburies *Sir* Thomas, 55

P.

PAges *Case, an information*, 19
Phillips *against* Evans, 33

Q.

QUeens Colledge in *Oxfords* Case, 15, 33

R.

Richards *against* Williams, 18

S.

SKelton against the Lady *Airie*, 17
St. Saviours *in* Southwarke *in an information*, 21
Shstabey *against* Walker *and* Bromley, 49
Sweet *and* Beale, 56
Sawyer *against East*, 74, 108
Smith *and* Jennings *Case*, 97
Scot *and his Wife against* Hilliar, 98

T.

TRollops *Case*, 51

V.

VAux *against* Austin *& others* 59

W.

Wilkes case, 54
Worslin Mannings *Case*, 58
Wentworth *and others against* Stanley, 93
Wickham *against* Wood, 113

Y.

YOrke *and* Allein, 20

ERRATA.

In page first l. 31. for Nay, r. Noy. 37. for 73. fol. 32. Hill, left out in the Margent untill 37. fol 37. in the margent. Leuh for Trin. 111, for 101.

MICHAELMAS

3 Jac. in the EXCHEQUER.

Bret againſt *Johnſon.*

IN an information for the King by the Attorney General againſt Sir Robert Johnſon for entrie into a houſe, and Cloſe in Buckingham Town, called the Parſonage Cloſe, in February 4. Iac. upon not guiltie pleaded a ſpecial verdict was found to this effect: that Queen Elizabeth was ſeiſed in fee, in right of her Crown of the late Prebends of Sutton Buckingham, Horton, and Hordley in the Countie of Buck. whereof the place where &c. is parcel, and the 20 Februarie 11. Eliz. granted to Henry Seymor Lord *Seymor* the ſaid Prebends for life rendring 11. s. 4. for rent, and the Jurors ſay, that theſe Letters Patents, by the command of the ſaid Lord Seymor were reſtored to be cancelled; and he being ſeiſed pro ut lex poſtulat, Queen Eliz. 21. Mar. 37. Eliz. reciting the former Patent, Quas quidem litteras patentes, et totum jus, ſtatum, titulum, terminum et intereſſe de et in præmiſſis præfatus dominus Seymor modo habens, et gaudens ſurſum rediddit et reſtituit cancellandum, to this intention nevertheleſs that we ſhould make to him another patent, which ſurrender we accepted of by theſe preſents; ſhe by her patent under the great Seal aſwell in conſideration of the ſaid ſurrender, as for other cauſes and conſiderations, demiſed and granted to the ſaid Lord Seymor the ſaid foure Prebends for his life, the remainder to Anthony Wingfield for life, the remainder to Robert Iohnſon for life rendring 90 l. 3 s. 3. d. for rent, and they found that there was not any actual ſurrender, or cancellation of the ſaid Letters Patents of 11. Eliz. but reſtitut. ad cancellandum as before the making, and acceptance of the ſecond Patent of 37. Eliz. and they found that there was not any Vacat made upon the inrolment of the Patent of 11. Eliz. and they found that 10. April 37. Eliz. Anthony Wingfield, and Iohnſon granted to the Lord Seymor for 90. years to commence after his death, or forfeiture of his eſtate, if Wingfield, or Iohnſon, or one of them ſhould ſo long live, and 20. April the ſame year the Lord Henry Seymor granted to Sir Robert Johnſon for 60. years to begin after the death of the ſaid Seymor, rendring 400. l. rent to him his Executors or aſſignes; the Lord Seymor died 4. Iac. and Sir Robert Iohnſon entred, upon which entrie this information was brought: nay, that the Defendant is guiltie, and he divided the caſe into two points. First, if there be any actual ſurrender of the patent of 11. Eliz. becauſe there is not any record thereof, and the King cannot take by bargain or contract if there be not a record of it, as appears by 5. E. 4. and 7. E. 4. 6. and Plowden in the Dutchy of Lancaſters caſe, for as it is there ſaid, it agrees with the Majeſtie of the King to have a record of things

Mich. 3. *Jac.* in the *Exche-quer.*

made by him, or to him, and if a grant is pleaded to be made to the King, it is good to ſay quod non habetur tale Recordum, and here is no record, but a memorandum made upon it, for otherwiſe leaſes made by Abbots before the diſſolution ſhall be ſaid to be of record, becauſe after the diſſolution they were all put in the Tower amongſt the records, but queſtionleſs thoſe leaſes are not of record, becauſe there is not any Memorandum made upon them: alſo in the Lord Latimers caſe 12. H. 7. in Kelloway, where Baron and feme ſeiſed in right of the feme in fee granted to the King, this is not good if the deed be not inrolled, for there they of the other ſide would have concluded the Tenant to ſay the contrary, but that the deed was inrolled, and ſo by way of admittance confeſs that a grant to the King is not good, if the deed be not inrolled: 3. Eliz. Dyer the Lord Dacres ſurrendred a patent of an office granted to him before Sir Nicholas Hare Maſter of the Rolls, but the ſurrender was not recorded, nor the patent Cancelled, nor a Vacat entred upon the inrolment, this is void, and ſhall not be aided now after the death of Sir Nicholas Hare per optimam opinionem; in Kemps caſe Dyer 195. but it will be ſaid that it appears not there, that the ſurrender was made in Chancery, and therefore differs from our caſe; but ſee 19. Eliz. Dyer 355. which is direct in the point, where an exchange of land was with E. 6. by deed acknowledged to be inrolled &c. but not inrolled, it cannot after nor be inrolled, nor veſt any intereſt in the Queen either as heir, or Purchaſor, ſo hereby it appears that before inrolment, an eſtate veſts not in the King, and he ſaid that he had heard Popham late chief Juſtice ſay, that the opinion of the Judges was, that in this caſe nothing veſts in the King until inrolment, and for that there was a private Act made in 39. Eliz. to relieve this particular caſe, ſo the Memorandum makes the record, and not the delivery of the patent to be cancelled, but the opinion of Davers in 37. H. 6. 10. may be objected againſt me, where he ſaith, that if a man make a feoffment to the King, and deliver the deed in the Exchequer, or at the Kings Coffers, it is good without inrolment, which by the Court is intended for goods, and not to a feoffment made to the King, for this is only the opinion of Davers, which I denie to be law, and alſo all this may be admitted for law, and yet prove nothing, for when the partie ſurrenders to the King, and delivers the deed to be inrolled, ſo that he had done all which in him is to paſs the land to the King, then it may aptly be ſaid in common ſpeech, that the right of the land is in the King: becauſe he of right ought to have it after inrolment, although he had not the propertie of the land before the Deed be inrolled, then if nothing veſt in the Queen in the principal caſe before the patent made in 37. Eliz. the words ſubſequent in the patent will not help the matter, viz. quam quidem ſurſum redditionem acceptamus per præſentes, becauſe the King had taken nothing before, and the recital in the patent concludes not the Queen; it hath been ſaid that the not making of a Memorandum is the fault of the Clark, and this ſhall not prejudice the partie in ſo great a miſchief, but I anſwer that the ſame miſchief will inſue, where a man ſells land by indenture, and delivers it to the Clark to be inrolled, and he inrols it not within 6. months, nothing ſhall paſs by the ſale, yet this is only the fault of the Clark, but in this caſe he may have his action upon the caſe againſt the Clark, if ſo it be that he had paid all his fees, the ſame law in the principal caſe, but admitting that, yet great miſchief will inſue if it be ſo that the eſtate ſhall paſs to the King before inrolment, for then the eſtate and intereſt ſhall be tried by the Countrie, and not by the record, and then alſo in what place ſhould a man ſearch to finde the Kings eſtate, and perhaps for want of knowledge thereof every grant of the King will be avoided, and this would be a great miſchief to the ſubjects, but admitting that this ſhould be a good ſurrender without a Memorandum, or Vacat, yet this is not ſhewed in this caſe, for it appears not here that his intent was to ſurrender it, for although he deliver up his Letters patents, yet his eſtate remaines, and then the conſideration of the patent in 37. Eliz. being of a ſurrender of the firſt patent, and alſo of a ſurrender of the eſtate, if the eſtate be not ſurrendred as well

as

as the patent, the conſideration is for that falſe, and then the patent is void, and to prove that the eſtate remains although that the patent be ſurrendred, it appears by Fiſher 12. H. 7. 12. where Tenant in tail of the gift of the King loſes his letters patents, his heir is not at a miſchief, for he may have a Conſtat, and this ſhall be good in evidence, but he cannot plead it, and this appears by the Preamble of the Statute of 13. Eliz. cap. 6. Dean and Chapter Leaſe land, this ſhall be by Deed, and in this caſe although that the leſſee redeliver his deed, it is no ſurrender of the eſtate, but he ſhall not plead it without ſhewing a Deed of the aſſent of the Chapter, but he ſhall give it in evidence, and good, becauſe he had once a Deed thereof, as it appears by 32. E. 3. Monſtrance of Deeds, and it appears by 32. H. 8. Patents Br. 97. that if the Kings Patentee loſe his letters Patents, he ſhall have a Conſtat, and by 32. H. 8. ſurender Br. 51. and 35. H. 8. tail: that if the King give in tail, and the Donee ſurrender his Patent, the tail thereby is not extinct, ſo although letters Patents are neceſſary for pleading of the Kings Grant, yet they are not requiſite for the eſſence and continuance of the eſtate: alſo it is found that the ſaid Patents were reſtored to be cancelled per mandatum Domini Seymor, & it is not found what manner of authoritie the Lord S. gave, nor found to whom the letters Patents were delivered, nor at what time, and peradventure they were delivered after the ſecond Patent made, and then is the ſecond Patent falſe, becauſe then there was no ſurrender, and this is one of the reaſons put in Kemps caſe 3. Eliz. 195.

Mich. 3. *Jac.* in the *Exchequer.*

The ſecond point admitting that there is no actual ſurrender, if not withſtanding that, the Patent of 37. Eliz. be good, and as to that, I ſay if this Patent be good, it is becauſe the Queen had recited the particular eſtate, and therefore is not to her damage, or becauſe the ſecond Patent is a ſurrender in law of the firſt, and the rather becauſe it appears to be the intention of the Queen, that the acceptance ſhould be a ſurrender by theſe words, quam quidem ſurſum redditionem acceptamus per præſentes; and as to the firſt reaſon it ſeems to me, that the Queen recites this as a particular eſtate determined, and not as an eſtate continuing, for by theſe words modo habens et gaudens it appears that the meaning of the Queen was, that the Lord Seymor had not an eſtate continuing in the intent of the Queen at the time of the making of the ſecond Patent, but the Lord Chandos caſe in Coo. 6. fol. 55. ſeems to impugne me in this opinion, where the King made a gift in tail, and afterward by Patent reciting the former Grant, and alſo that the Patentee had delivered up the Patent into the Chancerie to be cancelled, by vertue whereof he thought himſelf to be ſeiſed in demeaſne as of fee, did grant the lands unto the ſaid Donee in fee, in that caſe it was adjudged that the reverſion did paſs unto the Donee, although the words of the reverſion were not contained in the Patent: although that the King in that caſe did think that he granted a poſſeſſion, but the reaſon of that was, that although the Patent was not inrolled, yet by law it ſhould have been ſurrendred unto the King, nevertheleſs becauſe that was the collection of the King, and not the ſuggeſtion of the partie that the King was ſeiſed by vertue &c. therefore the collection being falſe ſhall not make the Patent void, for all there that came of the ſuggeſtion of the partie is true, but our caſe is otherwiſe, for here the intention of the King was, that he had the land in poſſeſſion when he had made the grant, and in truth he had but a reverſion: alſo if the Patent ſhould be good, great prejudice would or might enſue to the Queen thereby, for put the caſe that the Queen had annexed a condition to this leaſe, or that ſhe had reſerved a greater rent upon it, this condition, or increaſing of the rent was the cauſe that the Queen had made this grant, and that if the ſecond grant ſhould be good, and the firſt not determined, that the Grantee may claim his firſt eſtate, and ſo defeat the Queen of her rent, and of his condition to have benefit of either, and this was the reaſon why the Patent was adjudged void in the caſe of Barwick Coo. lib. 5. fo. 94. becauſe ſome parcels were not ſurrendred to the Queen, and therefore they were not ſubject to conditions, or rent reſerved upon

Mich. 3. *Jac.* in the *Exchequer.*

the ſecond Patent: and for a ſecond reaſon he argued that the acceptance of the ſecond Patent is not a ſurrender in Law of the firſt Patent, becauſe the firſt Patent is meerly void, as it appears in Fulmerſton and Stewards caſe Plowden 107 that the reaſon why the taking of a ſecond leaſe ſhall be a ſurrender of the former is, becauſe both the eſtates cannot be in one and the ſame Parſon at one and the ſame time, but this reaſon holds not in our caſe, becauſe no eſtate paſſeth by the ſecond Patent in regard it is void, and therefore this caſe may be reſembled unto the laſt caſe in 23. Eliz. Dyer, where a man taking a ſecond benefice incompatible without diſpenſation, doth not make the firſt benefice void by the Statute againſt Pluralities, becauſe he never was a lawful Parſon of the ſecond benefice in reſpect he never ſubſcribed to the Articles according to 13. Eliz. cap. 12. and in Harries and Wings caſe the ſecond Patent was void: but a third reaſon was, he thought that theſe words Quam quidem ſurſum redditionem acceptamus have not aided this Grant, for the ſecond Patent is made in conſideration of a ſurrender made by the Patentee, and therefore there ought to be a good ſurrender made by him, or otherwiſe the conſideration is falſe, for the King in conſideration of a ſurrender made doth grant lands where in facto there was no ſurrender, as if the King grant black acre in conſideration of a ſurrender of white acre, which in facto was not done, this grant is void: alſo this appears by theſe words modo habens et gaudens ſurſum reddidit et reſtituit &c. that the intention of the Queen was, that the Lord Seymor had ſurrendred before, and that he had no eſtate at this time of the making of the grant, for theſe words modo habens et gaudens ought to be interpreted according to the rules of Grammar, and for that in 9. H. 7. 16. b. the Court conſulted with Grammarians touching the expoſition of Latine words and was by them directed, and he ſaid that this word modo had divers ſignifications, for this ſignifieth nuper, interdum, aliquando, but moſt properly it ſignifieth nuper, or interdum, modo Paratus erat, Codrus erit ſubito, qui modo Crœſus erat, modo ad hunc diem &c. there it ſignifieth the preſent Tenſe, or time, but in the principal caſe, if modo ſhould ſignifie the preſent tenſe, then it would not ſtand with this word ſurſum reddidit which is the preter tenſe, but if here it be conſtrued that modo ſignifieth the preſent tenſe, this may well ſtand with ſurſum reddidit, and the meaning of the Queen ought to be taken to be that the Queen was deceived, and the Patent void, although in the principal caſe here was a good ſurrender before the ſecond patent, yet until agreement nothing veſts in the Queen, and therefore if a man pleads a ſurrender made by the leſſee to him in reverſion, he ought to plead an agreement to this ſurrender, and 13. H. 4. that this is not in him before agreement and entrie, and 32. E. 3. Bar 262. that until agreement nothing veſts in him; it was lately adjudged in the Common Pleas, where an incumbent had reſigned yet until the ordinary did agree unto it, he remained an incumbent ſtill, and for that in aſmuch as the Queen had not agreed before the ſecond Patent made, nothing veſteth in her till then, and then ſhe was deceived, for ſhe thought that ſhe was in poſſeſſion thereof at the time of the grant, and therefore he concluded that he conceived the Patent was void. Brock to the contrary, and he divided the caſe into three points. Firſt, whether here be an actual ſurrender found to be made in Law. Secondly, if the acceptance of the ſecond leaſe be good, or if the Queen reciting the eſtate, and that he had ſurrendred which the Queen had accepted, and that in conſideration thereof ſhe made the Grant, whether this be made good although there be no actual ſurrender. Thirdly, admit that here be no actual ſurrender in facto, whether this grant be aided by the Statute of 43. Eliz. cap. 1. but firſt before he would enter into his argument, he ſaid that he would waſh away the Rubs caſt in his way to make his way the ſmoother, and firſt where it hath been ſaid, that if the Queen ſhould take by contract, or bargain without record that great miſchief would inſue, for by that means the Queens title ſhould be tried by the Countrie: and in proof thereof he cited the Lord Latimers caſe in 12. H. 7. 10, 11. which he thought to be no authoritie

rticle for that purpoſe, for there the opinion of the Court was delivered concerning the ſhewing forth of Letters Patents, but not concerning matter of inrolment, alſo the caſe was of an eſtate of inheritance to be conveyed from the King, but the caſe now in queſtion is but for an eſtate for life, which may in law more eaſily be determined than an eſtate of inheritance conveyed: alſo the caſe of 19. Eliz. Dyer 355 cited of the other part proves not this caſe, for firſt the queſtion was not there whether the King took any thing without inrolment, but whether the Deed may be inrolled in the time of another King. Secondly, if this be confeſſed that the King there ſhould take nothing without inrolment, yet this is not like to our caſe, for here this is but to merge a particular eſtate which differs much from the caſe of conveying of an inheritance: alſo this is confeſſed if there had been a Memorandum made in the Margent, then the ſurrender had been good: and the want thereof is the laches of the Clark, and then if it ſhould not be a ſurrender before the Memorandum made, the Clark ſhould make the ſurrender, and not the partie: and as to the Book of 37. H. 6. it is not anſwered, for to ſay, that the King hath no right to the thing granted before inrolment, but that he hath the propertie, that cannot be: and to that which hath been objected, that there doth not appear any intention of the ſurrender, becauſe that although the Patents are ſurrendred, the eſtate remained, the Book of 32. E. 3. Monſtrance of faith 178. proveth nothing, for there it is ſaid, that a man may plead, that a Dean and Chapter did not leaſe modo et forma without ſhewing any Deed, for there this pleading is not to devеſt any thing out of &c. and alſo it appears in the principal caſe, that his intent was to ſurrender, for the Jury do finde that the Letters Patents were reſtored by the command of the Lord Seymor to be cancelled: and to that which hath been objected, if the ſecond Patent ſhould be good, that the Queen might loſe her Rent, or condition, becauſe the firſt leaſe hath his continuance; to that I give anſwer, that the firſt leaſe hath not his continuance, and therefore no loſs can grow to the Queen: and to that which hath been objected, that the Queen is deceived, it appears by theſe words modo habens &c. reſtituit &c. that the intention of the Queen was, that the Lord Seymor had ſurrendred his eſtate before, and that he now had nothing, becauſe that the word modo being joyned with the word reddidit ſignifieth the time paſt, but as to that it ſeems to me, that although (modo) poetica licentia in the ſtrict conſtruction of Grammer may ſignifie the time paſt, yet the ſignification thereof ſhall not be ſo taken in the letters Patents, for there it ſhall be taken in common conſtruction, and not to the deceipt of the King, and therefore in the Dean and Chapter of Briſtols caſe 7. E. 6. Dyer the words are nuper in Tenura I. S. et modo in Tenura A. B. there nuper is taken for the time paſt, but modo for the preſent time: and in 11. H. 7. Rogerum Townеſend modo militem is to be intended that he is now Knight, and not that he was a Knight in time paſt, and not now; alſo it is ſo to be obſerved here, that theſe words (habens et gaudens) are annexed to this word modo, both which are in the preſent time, and reſtituit comes afterwards, and ſo modo is not annexed to reſtituit, but unto habens et gaudens, alſo although the word ſhall be referred unto reſtituit, yet all may well ſtand together, for reſtituit may be referred unto the time preſent, as ſiquæ fuerint in 35. H. 6. 11. and to that which hath been objected, that until the Queen agrees unto the ſurrender, the eſtate is not in the Queen, he thought that where Tenant for life ſurrenders before agreement, he in the reverſion is Tenant to the Præcipe, although he ſhall not maintain a Treſpaſs before entrie, for by 21. H. 7. 12. it appeareth that an eſtate for life may be determined aſwel by word as by ſurrender, ſo in 9. H. 7. where the Tenant dies without heir, the freehold is immediately in the Lord, but yet he ſhall not have an action of Treſpas before entrie: now as to the firſt point he conceived it to be an actual ſurrender although there be no Vacat made, nor any Memorandum, and to examine it he did relate what Acts might make a ſurrender, and to that purpoſe he ſaid, that words being uſed which do prove an aſſent of the Tenant, that he

Mich. 3. Jac. in the Exchequer.

Mich. 3. *Jac.* in the *Exche-quer.*

he in reverſion ſhall have an eſtate, that ſhall be a ſurrender without expreſs words of a ſurrender, for a man may ſurrender by theſe words Remiſit, or reſignavit, for the words are not material, if ſo there be ſubſtance, as in 40. E. 3. placito 14, and 40. Aſſiſes pl. 16. if a leſſee for life ſaith to his leſſor, that you ſhall enter, and I will that you ſhall have this land, this is a good ſurrender. So in 28. H. 8. Dyer 33. if a Termor agree that he in the reverſion ſhall make a feofment, that is a ſurrender, ſo in 8. Eliz. Dyer 251, 252. leſſee for life is content that he in the reverſion ſhall have the land, and his intereſt, that is a ſurrender, but in that caſe it appeared that a rent was reſerved, and an agreement that the leſſee ſhould have it againe, if he ſurvived the leſſor, and therefore appearing plainly that it was not intended to paſs by way of ſurrender, it was at the laſt adjudged no ſurrender, ſo in 14 H. 8. the Grantee of a Rent did ſurrender the Deed, and that held to be a good ſurrender of the Rent: it is doubted in 2. Eliz. Dyer in Sir Maurice Barkleys caſe 156. if the ſurrender of the Patent of an Office, unto a maſter of the Chancerie out of the Court be good without deliverie of the Patent to be cancelled, but that Book proveth nothing, but that a delivery of a Patent to be cancelled ſhall be a good ſurrender, though the Patent be not cancelled in facto: it hath been objected, that it matters not what commandment the Lord Seymor did give, nor in what Court the Patents were given up, nor before whom; but to that he ſaid in aſmuch as it is found, that the Patents were given up by the commandment of the Lord Seymor to be cancelled, that being it was by his command, it was his own ſurrender: alſo it appears that the letters Patents were under the great Seal of England, which alwayes iſſueth out of the Chancery, and therefore it cannot be cancelled in any other Court, and it ſhall be intended, that they were given up to be cancelled there, alſo this word reſtituit ſignifieth to reſtore, and a man cannot reſtore any thing but where he had it, and he had it out of the Chancery, and therefore it ſhall not be otherwiſe intended but to be there reſtored, ſo in Baggots Aſſiſe 9. E. 4. 7. it is pleaded Quod reſtituit litteras Patentes Cancellandas, and ſheweth not to whom, nor where, and it was held to be very good: but it is there pleaded Quod ſurſum reddidit Patentes Domini Regis, and ſhewed in ſpecial to whom they were ſurrendred, becauſe it may be to any that hath power at the time of the ſurrender, but a man cannot reſtore unto any, but ſuch a one who granted unto him, and therefore needs not ſhew unto whom he did reſtore: and theſe words reſtituit Cancellandas are no new words, but uſually uſed in ſurrenders of Patents, as it appears by 9. E. 4. 7. and in Altonwoods caſe Cook lib. 1. and there the not entring of a Vacat doth not hurt, for it was the fault of the Clark: and Sir Maurice Barkleys caſe in 2. Eliz. 176. cited before doth not queſtion it, that the entring of a Vacat ſhould be material; but the queſtion here is, becauſe he did not deliver them up to be cancelled; in the Lord Darcies caſe Dyer 195. the jury did think that there was no ſurrender at all, but the Book doth not warrant but that there may be a ſurrender without a Vacat: and he ſaid, that at this time the matter is depending for Saint Saviours in Southwark if it be a good ſurrender without a Vacat entred, and no opinion as yet given in that caſe: and where it hath been objected, that there is no actual ſurrender until that the Queen hath agreed, and 8. and 21. H. 7. cited, that where a man pleads a ſurrender, he muſt alſo plead an agreement, yet becauſe the agreement cannot appear by any Record, that the partie can procure to be made of it, it ſhall be good, although there be no record made of that agreement; yet in this caſe, the Queen doth agree, as appears by the words in the ſecond Patent, Quam quidem ſurſum redditionem acceptamus &c. Secondly, admitting there is no actual ſurrender in this caſe, yet if when the Queen did recite the particular eſtate, and that ſhe had accepted the ſurrender thereof, and in conſideration of it ſhe maketh a grant, whether this ſecond Patent ſhall be good, and it ſeemeth that it ſhall: and therefore it appeareth by 37. H. 6. 18. that the taking of a ſecond leaſe ſhall be a ſurrender of the former: and in Corbets caſe 11. Eliz. Dyer

280.

280. & 4. Mar. Dyer 140. although the firſt leaſe be by deed indented, and the ſecond but by word: and in Ives caſe Cook lib. 5. 11. acceptance of a future leaſe is a ſurrender of a leaſe in poſſeſſion; and to that purpoſe is 21. H. 7. 14. H. 8. 15. 31. Aſſiſes placito 26. and other Books, and in 3. Eliz. Dyer 200. the King granted a houſe for years, and after did grant to the Patentee the cuſtody of the houſe with a fee, and the Patentee accepted the fee, and it is there doubted if that ſhall be a ſurrender of the Term, and the matter was Compounded, but he ſaid that he heard that the opinion of the Judges was, that the acceptance of the cuſtodie and fee was a ſurrender of the Term, by that I do infer, that there ſhall be a ſurrender by implication aſwell where the King is partie, as where a common perſon only, firſt, if a ſurrender be effectual, it is ſufficient although it be not formal, becauſe it worketh as much profit to the King, and the ſurrender in this caſe was at the ſame inſtant that the Queen did Seal the letters Patents, for the eſtate paſſeth from the Queen without delivery: and it appears that the intention of the Queen was not to have any actual poſſeſſion of that, by theſe words (modo habens et gaudens:) but it hath been objected in as much as this ſurrender was at an inſtant, that it ſhould be void; becauſe that in inſtants the beſt ſhall be taken for the King, yet it ſeemeth to me that it is good, as in the caſe of 49. E. 3. 5. a. a man deviſeth Burgage land holden of the King, and dieth without heir, this deviſe is not good againſt the King, becauſe the deviſe taketh not effect until the inſtant of the deviſors death, and at that inſtant alſo doth the title of the King begin by death without heir; and he cited Plowden 108 & 109. in Fulmerſtons caſe, for the expoſition of theſe words (not now in being) within the Statute of Monaſteries; and if in that caſe iſſue had been taken, whether it had been a ſurrender or not, it ſhould have been found to be a ſurrender, becauſe it is a ſurrender in the law, as it was in Thetſores caſe in the Common Pleas p. 28. Eliz. Rot. 122. in waſt, Baron and Feme Donees in tail make a leaſe for life, the husband dieth, and the wife diſagreeth to the leaſe, and the iſſue was, if the husband and wife did leaſe, and it was found that they did not leaſe, becauſe now by her diſagreement it is become in law not the leaſe of the wife; Cook lib. 3. Butler and Bakers caſe accordingly fo. 27. & 28. but if the King be to ſuſtain any loſs by the conſideration if that were falſe, then ſhall it make the Patent void: as it is in 9. H. 6. where the King was deceived in the value, ſo 18. Eliz. Dyer 352. where there was a loſs in eſſe; but it is contrary where there grows no loſs to the King as 26. & 28. H. 8. of a thing paſſed: becauſe the King is not to have benefit of it, the Lord Chandos caſe is not anſwered on the other ſide, for there the King did intend to have the actual poſſeſſion where in facto he had not, yet becauſe that was only a recital and Collection, in the matter in law it doth no hurt, ſo in the principal caſe, and ſo if the King grant a Mannor although he hath but a reverſion of it, yet it ſhall paſs without the word reverſion 7. Eliz. Dyer 233. and the Kings Patent alſo ſhall be ſo conſtrued, that one part may ſtand with another, viz. that the Lord Seymor now having the eſtate &c. doth reſtore unto us, &c. the which we do accept &c. as in Sir John Molins caſe 40. Eliz. Cook 6. Lord, meaſne, and Tenant, the Tenant was attainted of Treaſon; and the King did grant the land, tenendum de nobis &c. ſuis noſtris et aliis cap. dominis feodi illius per ſervitia inde debita, et de jure conſueta. He ſhall in that caſe hold of the meſne as the Tenant held before, for if he ſhould hold of the King, the words ſubſequent would be void; and for that cauſe ſuch a conſtruction ſhall be made that all may ſtand together; now for the third point, admit that the ſurrender is not good, yet it is aided by the Statute of 43. Eliz. cap. 1. which aides all grants and ſurrenders &c. to or from the Queen: the clauſes for conveyances to the Queen are with reſtraint, but for the conveyances of the Queen there are certain exceptions, our caſe is within that part of the Statute which relates unto the 25th. year of her Raign, and our caſe is within the words of the Statute, viz. ſurrenders, and ſurrenders within the Statute are ſuch as are ſurrenders

Mich. 3. *Jac.* in the *Exchequer.*

to

Mich 3. *Jac.* in the *Exche-quer.*

to a common intent, and therefore where the partie hath done that in him lieth, but ſome thing is to the perfection of a ſurrender, that is aided by the Statute: alſo by this word aſſurance in the Statute a purchaſe without deed is not aided, by a good aſſurance a ſurrender without deed is aided within the Statute, or elſe the Statute ſhould ſerve for little or nothing, the Statute of confirmations of letters Patents hath the ſame words. That the Statute of 43. Eliz. hath, and upon 18. Eliz. it was reſolved in 27. of Eliz. in Huſſeys caſe, that if Tenant in tail be and the reverſion is granted to Queen Eliz. this is good, and aided by the Statute, ſo if a man grant lands to the King, but the Deed is not inrolled, this alſo is aided by the Statute, and where a grant ſhall be good at the Common Law by a Common perſon, there the like grant made by the King is made good by the Statute, and there was a caſe in the Dutchy Chamber Trin. 37. Eliz. between Cavendiſh and Bateman, where the Queen did grant Turbary within the Manor of Lady Meadows within the Countie of Darby unto Bateman for 21. years, Bateman thereof makes a meadow, and afterwards the Queen in conſideration of the ſurrender of the firſt grant, doth grant the ſame unto him for 40. years by the name of a meadow, and although he made no ſurrender, yet by the taking of the grant it was reſolved that it was a good ſurrender, becauſe there it was but of a particular eſtate, but otherwiſe it ſhould be of fee, for a fee cannot be ſurrendered by implication: Doddridge Serjeant of the King, argued that the Defendant is guiltie of intruſion: and he divided the caſe into two parts only, the firſt whether there be a ſufficient conſideration at the Common Law, to make the ſecond Patent void, the ſecond point admitting that there is not a ſufficient conſideration by the rule of the Common Law, whether the defect thereof be aided by the Statute of 43. Eliz. and he argued that the ſurrender, which the Queen intended to be the conſideration of the grant, was an actual ſurrender already perfected before the grant, which doth plainly appear to be ſo as he took it by the word ſurſum redditionem, and he ſaid that he could not ſo have that word in the Preterperfect Tenſe, as it would be ſupplied by an act of the Preſent Tenſe as is pretended, viz. that the ſurrender is to be made by the acceptance of a new grant: and he vouched 35. H. 6. alſo he thought her to intend an actual ſurrender for an other reaſon, viz. for the words nobis ſurſum reddidit et reſtituit cancellandum, the which cannot be performed without an actual ſurrender, for otherwiſe there is no reſtoring: and he vouched 18. Eliz. fo. 437. & 43. E. 3. fo. 19. where it is obſerved, that if a wife do not remain with an Adulterer with her own accord &c. another reaſon, the Queen did intend an actual ſurrender, becauſe of the words (ea intentione) which implie a ſurrender to have been actually precedent; another reaſon was for that hereby the acceptance of the ſecond Patent there is no ſurrender wrought of the former eſtate in the Law, until after the acceptance of the ſecond letters Patents, and ſo the Queen deceived in the time: and he vouched the caſe of Totnes in 40. Eliz. in the Kings Bench, and Savages caſe in 9. H. 8. Carrels Rep. fo. 195. and here it appeareth, there was no ſurrender upon record precedent unto the ſecond grant: alſo it ought to have been found by a ſpecial verdict, that the ſecond letters Patents were granted at the ſuit of Seymor, or otherwiſe the granting of them to him makes no ſurrender of his former letters Patents, and then it follows that they are not ſurrendred yet. And where it hath been objected that the Queen uſeth theſe words in the ſecond letters Patents, quas quidem litteras patentes prædictus Seymor modo habens et gaudens, and therefore it muſt be intended ſhe takes notice that the firſt letters Patents were not yet ſurrendred, for then ſhe would not ſay (modo habens et gaudens) he anſwered that this word modo ſignifieth the time paſſed, or the time preſently for to paſs, and the word habens cannot be taken in a legal ſenſe, no otherwiſe then the word being is taken in Dockwrais caſe, 27. H. 8. fo. 19. and ſo theſe words modo habens et gaudens, ſignifie no more but that once he had an eſtate; alſo the Queen is deceived in this word acceptamus, for ſhe cannot in the Law be ſaid to

accept

accept of that which by the Law is not veſted in her: alſo he ſaid that an actual ſurrender ought to be an actual giving up of ſo much as the Patentees received of her grant, as it appears 14. H. 8. 21. E. 3. Brook Prerogative 90. 7. E. 6. Dyer Sir Maurice Barklies caſe 2. Eliz. 159. Sir Ralph Sadlers caſe, that a duplicat is not ſufficient if the letters Patents be ſurrendred and cancelled 3. Eliz. Dyer 195. and he ſaid that the ſurrender which the Queen intended, ought to paſs an eſtate from the partie ſurrendring which is not ſo done here: and where it hath been objected that the very delivery in the Court made of the letters Patents is a ſurrender of them, by the opinion of Davers in 37. H. 6. fo. 10. he ſaid that this book was no Law as it may appear 12. H. 7. fo. 12. Carrels Reports: although in that book alſo Vavaſour agreeth with Davers: and where it hath been objected that here is an actual ſurrender made, yet the intention of the Queen ought to be obſerved to make it an effectual ſurrender, or otherwiſe though ſhe hath no loſs by the ſurrender that is made, yet is it no effectual ſurrender, as appears by 18. Eliz. Dyer 352. and ſo alſo was the caſe of the Iſle of Man: alſo Sir Henry Seymor did not in this caſe all that he might have done for the perfecting of this ſurrender, for he ought to have ſeen this his ſurrender recorded, as it appears by the book caſe of the 11. H. 4. where it appeareth that if I be bound to levie a fine I ought to ſue forth a writ of covenant or dedimus poteſtatem, and do all ſuch other acts as it may make it a good and perfect fine in Law. Secondly, he took it that the Statute of 43. Eliz. did no whit aid this caſe, for that makes no ſurrender to the Queen to be a good ſurrender, but only an actual ſurrender which here is wanting, and the Statute in no ſort extendeth to a ſurrender in the Law, for the ſurrender which this Statute intendeth to aid, ought to be a ſurrender conveying and aſſuring &c. and this ſurrender in the law conveyeth nothing but only extinguiſheth, and for that purpoſe he put this caſe, if A. take a new leaſe of the Queen in 27. by indenture and this is of his own land, this Statute of 43. Eliz. doth not make ſuch a kind of conveyance in the Law, by Eſtoppel good to veſt the land in the Queen by this Eſtoppel which is a conveyance in the Law, unto the which the Lord chief Baron Tanfield ſaid, inſiſt not upon a labour of that kinde for it is plain enough, becauſe the Queen being partie there can be no Eſtoppel as to any part in that caſe, alſo as to that part of his argument Mr. Walter agreed on the other ſide, and alſo he ſaid, that if a grant of the Queeen were void at the Common Law for default or want of conſideration, this Statute aids not; Walter for the Defendant, and he divided the caſe into foure points, the firſt whether the Tenant for life by the Kings guift by ſurrendring his letters Patents hath alſo ſurrendred his eſtate. Secondly, if the ſurrender in this caſe made be defective only for want of matter of circumſtance as the inrolment &c. whether ſuch defects are ſaved by the Statute 43. Eliz. Thirdly, whether in this caſe an actual ſurrender be the conſideration meerly which moveth the Queen to grant, or what ſhall be intended the conſideration in this caſe. Fourthly, admitting that an actual ſurrender is the ſole conſideration in this caſe, then whether a Patent ſhall be adjudg'd void for default of ſuch conſideration, for a falſe conſideration doth not avoid a Patent, but a falſe ſurmiſe doth firſt when the Kings Tenant for life doth ſurrender or give up his Patent (although without deed) yet with ſuch circumſtances as the law requireth, the ſurrender is good: for although a ſurrender of letters Patents made by the Kings Tenant in tail will not make eſtate tail void or determine, as it appears by the book caſe of 35. H. 8. title ſurrender and Cook 6. the Lord Chandos caſe, yet the bare giving up of the letters Patents by a Tenant for life is a ſurrender of his eſtate, ſo here in this caſe is ſome proportion between a Tenant for life of the Qeen, and a Tenant for life of a Common perſon to amount to a ſurrender, and therefore it appeareth by 43. E. 3. that a Tenant for life may ſurrender without deed, and without livery and from the land, but a Tenant in tail may not do ſo: alſo if a Common perſon hath a rent or other thing which cannot paſs but by deed, yet a ſurrender of ſuch a rent ſhall be good by a

Mich. 3. *Jac.* in the *Exchequer.*

Mich. 3. *Jac.* in the *Exche-quer.*

bare deliverie up of the deed if he hath but an eſtate for life in the Rent: and this alſo, although it be but to the diſſeiſſor of the land out of which &c. the ſame Law, he took it of a particular Tenant for life of years: alſo 32. H. 8. Brook Patents 97. it is made a doubt whether the eſtate tail of the Kings Donee be determined and gone by ſurrendring of the letters Patent, and he referred that if thought worthy of a doubt whether it ſhould be a good ſurrender of an eſtate tail, they would have held it clearly a ſurrender for an eſtate for life: and it was admitted 3. Eliz. Dyer fo. 193. Mack-Williams caſe, that if in the principal caſe if a Vacat or cancellation had been, the ſurrender had been good actually without queſtion: and Sir Maurice Barkleys caſe cited on the other part proves the ſame alſo, for there it is admitted, that if the letters Patents had been given up, there had been a perfect ſurrender. And 40. H. 3. fol. 5. Belknap held that a ſurrender may be by word, which is to be intended by giving up the Patent: and that appears by Rolfs caſe in Dyer, that a voluntary ſurrender needs no Conſtat: alſo where it hath been objected that the ſpecial verdict in this caſe hath not found in what Court the ſurrender was made, he anſwered, that the Law ſhall intend it to be made in the ſame Court from whence the letters Patents did iſſue, for a ſurrender cannot be good being made in another Court, and therefore it muſt needs be intended the ſame Court: and he vouched 11. Ed. 3. fo. 1. and 18. Eliz. Plinies Caſe and Covel and Cabels Caſe in Banco Regis 38. Eliz. wherein a ſpecial verdict it was holden that all things neceſſary for the perfecting of that the Jury hath found to be done, muſt be neceſſarily intended concurrent. Secondly, the want of circumſtances in a ſurrender are perfected and ſupplied by the Statute of 43. Eliz. for although matters of ſubſtance are not aided within this Statute, yet matters of circumſtances are aided. And he ſaid that all the defects in this Caſe are matters of circumſtance, and to prove that the defects in this Caſe are only in circumſtance, he ſaid that there are three principal defects in conveyances which are meerly matters of circumſtance and aided within this Statute, the firſt is meerly want of form in a conveyance, and that ſuch a defect is aided, he cited Huſſies Caſe to be adjudged accordingly; the ſecond is where words are wanting in a conveyance, and that ſuch a conveyance is aided by this Statute, he cited the opinion of Popham and Gawdy in 44. Eliz. in a cauſe depending in the Chancery: the third matter of circumſtance is where there is want of ſome matter concerning the executing of an eſtate, and that ſuch defect is only matter of circumſtance and aided within this Statute he cited Morley and Whartons Caſe to be adjudged 7. Eliz. in the Common Pleas, that the default of not inrolling is aided by this Statute, and Mack-Williams and Kemps Caſe cited in Dyer before, proves this to be but matter of circumſtance, and for that he thought the ſurrender in the principal Caſe wanting nothing but inrolment is aided by this Statute: alſo in the argument of the ſecond point he ſhews what defects in conveyances ſhould be accompted matter of ſubſtance and ſo not aided by this Statute of 43. Eliz. and to this purpoſe he held: that all diſabilities of the perſon in a grant is matter of ſubſtance, and ſo not aided within this Statute; and he cited Twynes Caſe 32. Eliz. in the Exchequer to be accordingly. Secondly, he held that the nature of an aſſurance is not aided by this Statute, and therefore if a man hath power to grant an eſtate by fine, and he doth it by Deed, this is not aided by the Statute, for this is defective in matter of ſubſtance, and he cited Wiſemans Caſe, and Sir Hugh Cholmleys Caſe in Cook l. 2. alſo he ſaid if a man give land to the King and his heirs to have ten years after ſuch grant, this is not made good by the Statute. Thirdly, whereas it may be Collected, that becauſe it is found in the ſpecial verdict that an actual ſurrender was the cauſe which moved the Queen to grant, or that it appears to be the cauſe, he held that no conſideration plainly appeareth but only by relation to a conſideration before mentioned, and he ſaid that theſe words uſed by the Queen viz. (modo habens et gaudens) ſhew that the Queen took notice the ſtate was ſtill injoyed notwithſtanding the delivery up of the

letters

letters Patents; and therefore it cannot be intended by the verdict that the Queen intended an actual ſurrender before made for the conſideration: but whereas it hath been objected of the other part, that the word modo doth often ſignifie the time paſt, and ſome inſtances according to Grammatical conſtruction were given in proof thereof; and thereupon they would infer that the Queen by theſe words modo habens did intend no other but lately having or injoying: to that he gave a double anſwer; to the firſt he ſaid, that there was no cauſe ſhewed or inſtance given. That modo habens joyned together will ſignifie a time paſt, though taken ſeverally they may ſignifie ſo much, which makes a plain difference betwixt thoſe inſtances, and this preſent caſe. Secondly, admitting in a Grammatical conſtruction they did ſignifie as the other ſide would have it, yet the judges ought to adjudge thereof according to the moſt natural ſence of theſe words in Common underſtanding, and that ſo it may be done, he vouched one Talbots Caſe in 32 Eliz. in Banco Regis, in which after the Judges had conferred in the Court with divers learned Schollers touching the Grammatical conſtruction of a word uſed in a Conveyance, they afterwards notwithſtanding did waive the Grammatical conſtruction, and adjudged the word to ſignifie in Law according to the Common received ſenſe of the word, and according to this he vouched 12. H. 8. where the word uterque received the like conſtruction: alſo he vouched the 20. Eliz. Dyer fol. 262. where it is admitted, that the word modo is to be taken in the preſent Tenſe, and to this purpoſe he alſo vouched Billings Caſe in 38. H. 6. and Bozuns Caſe Coo. lib. 4. and then he concluded that in aſmuch as the ſpecial verdict had definitively found no conſideration, but generally for the conſideration above expreſt, he held that the ſecond Patent was good, for a Patent cannot be void, becauſe there is no conſideration to move the King to grant, but a Patent may be void as is pretended for a falſe conſideration, which is not in this caſe, and therefore &c. Fourthly, admitting that the conſideration in this Caſe was for an actual ſurrender before made, and that in this caſe no ſuch actual ſurrender was before made, yet he held that in this Caſe the ſecond leaſe is good: notwithſtanding the falſe conſideration, for it appears by 37. H. 8. Brook title patents 100. that a Patent ſhall never be void for a falſe conſideration, but by reaſon of a falſe ſurmiſe it may; but he confeſſed this difference was generally denied, becauſe a Patent ſhall be void by reaſon of a falſe conſideration, but he ſaid that the differences were infinite alſo upon this ground, for ſome take a difference where a conſideration is real, and where it is perſonal, and they hold that a real conſideration being falſe ſhall not avoid the grant, but otherwiſe of a perſonal, and ſo they take the Book of 37. H. 8. before cited to be good Law; and upon this difference others alſo have taken a difference where the conſideration is to come to the King himſelf, and where it is to come to a ſtranger: others alſo have taken a difference where the conſideration is of a thing valuable, and where it is not of value, yet they take a difference where that is paſt and executed, and where it is to come or Executorie; but he ſaid that although divers of theſe differences ſeemed to be good with great reaſons, and were backed with ſome Authorities, yet he needed not to take advantage of any of them for the maintenance of this Caſe, and for that he took this general difference for the maintenance of this Patent, viz. that if the conſideration be ſuch which brings a benefit or commoditie to the King, and this is falſe, that this avoyds the grant; but if it bring no commoditie to the King, although it be falſe, yet the grant is good, and to prove this diverſitie, he cited Harris and Wings Caſe to be adjudged in Banco Regis, and Barwicks Caſe Cook lib. 5. and Sir Hugh Cholmleys Caſe Cook. lib. 2. to be adjudged accordingly of a falſe recital, and he ſaid, although it be admitted that the conſideration which the King intended to have was an actual ſurrender, yet in aſmuch as this cannot be intended a thing more to his advantage, then a ſurrender in Law, the which plainly appears to be in this caſe, that the Patent is good, and for that he held that the ſecond leaſe ſhall not be avoided for ſuch a falſitie, and alſo he ſaid that

Mich. 3. *Jac.* in the *Exche-quer.*

Mich. 3. *Jac.* in the *Exche-quer.*

this Caſe is more ſtrong of his ſide then any Caſe which may be cited, in aſmuch as the King had no diſcommodity or loſs by the falſitie of the conſideration, but in this Caſe alſo he ſhould be at a loſs if the ſecond leaſe were not good, for the ſecond leaſe reſerveth a greater rent to the King, then was reſerved by the firſt, and therefore it is for his benefit, that the Law ſhould allow of the ſecond leaſe, to the intent it may make a ſurrender of the former leaſe, for the Kings advantage, and if the King granteth probis hominibus de O. rendring rent they are by this grant impliedly made a corporation for the benefit of the King to render him the rent, whereas otherwiſe the grant would be void; and ſo he took it in the principal caſe although the grant ſhould be void, by reaſon of the falſe conſideration, yet it ſhould be good to this purpoſe for the Kings benefit: and after Termino Mich. Anno Sexto Jacobi Regis this Caſe was argued again, and Nicholas Serjeant for the Defendant ſaid, that the ſole point of the Caſe is, if the conſideration of the leaſe made in 27. Eliz. be good or not, and this is expreſt to be Tam in conſideratione ſurſum reddditionis prædict. quam pro aliis Cauſiis, et Conſiderationibus &c. then it is to be conſidered if here be ſuch a ſurrender as is meant to be within the intent of the Conſideration of the Queen, and he ſaid that in this Caſe here was a good ſurrender in law clearly by the Book of 37. H. 6. for in all Caſes where a Tenant for years accepts a leaſe of him in Reverſion as here the Lord Seymor did, then this is a ſurrender in Law of his firſt intereſt, but the Earl of Salisbury Lord Treaſurer ſaid, that this is not properly a ſurrender of this Antient Term, but an extinguiſhment thereof, to which the Lord chief Baron Tanfield agreed: and Serjeant Nichols further ſaid, that the Conſideration which moved the Queen to her grant was only the ſufficient ſurrendring of the precedent eſtate of the Lord Seymor, and not the reſtoring of the letters Patents, and therefore although it be admitted, that here was not a ſufficient reſtoring of the letters Patents, nor an actual ſurrender by this means, yet here is an effectual ſurrender by the operation of Law, and then this being the ſole Conſideration which moved the Queen to her grant, the not ſufficient reſtoring of the letters Patents is not material, for he ſaid, it ſeemed to him that in rei veritate the particular eſtate cannot be ſufficiently ſurrendred by this bare giving up of the letters Patents by the Tenant for life, as it appears by Walſhes Caſe cited in Altonwoods Caſe Cook lib. 1. and therefore he inſiſted not upon that. Secondly, he argued that a recital in the Kings Patents of a thing material if it be falſe, and come by information of the partie is all one as a falſe Conſideration and not otherwiſe: and he ſaid that it appears by Brook tit. Patents pla. 100. that all Conſiderations valuable, although they are falſe do not avoid a Patent, as where the King grants lands prodecem libris ſibi ſolutis, although that in facto this is falſe, yet the grant is good: alſo it appears by 26. H. 8. and Sir Thomas Wrothes Caſe, and by 21. E. 4 fol. 48. that a conſideration executed avoideth not a grant although it be falſe, but he ſaid that it appears by the Caſe of 18. Eliz. Dyer 352. that if the King make a leaſe in Conſideration of a ſurrender of a precedent leaſe which in truth was void, by ſome that the King may avoid the leaſe, but others contrary, becauſe it was not done upon the ſuggeſtion of the partie, but for a conſideration executed, and the ſurrender of the eſtate precedent was the material cauſe and conſideration of the grant: and he ſaid, that although in this Caſe there be not a good ſurrender of the letters Patents, yet the Conſideration being only the ſurrendring of the eſtate, that is not material, for as it is ſaid in Altonwoods Caſe Cook lib. 1. if the King in Conſideration only of the ſurrender of precedent Patents makes a grant, in this Caſe there needs no averment of an eſtate, for the ſurrender is not material of the letters Patents. Alſo it appears Cholmleys Caſe Cook lib. 2. that if the King recite an eſtate to be made with Condition, although that at the ſame time of the recital this is not Conditional, yet if once this were Conditional the King is not deceived, although the condition be now releaſed, and he cited alſo the Lord Chandos Caſe Cook lib. 6. where it appears that

if

if the King recite a thing untruly which cometh not of the information of the partie, this ſhall not hurt the Grant, except it be part of the conſideration, and he ſaid, that Harris and Wings Caſe differs from this Caſe, for there the King had a Tenant who held a Tenement by the yearly rent of ſix pounds, and another Tenement of him by the yearly rent of nineteen pounds, and he made a new leaſe of both thoſe to the ſaid Tenant, without any recital of the former leaſes reſerving but Nineteen pounds for both, and there it was adjudged, that the ſecond leaſe was not good, but he ſaid, that the reaſon of that judgement was, not becauſe the antient leaſe was not recited, but by reaſon that a loſs in the rent came to the King, and ſo by intendment he was deceived, and this was alſo upon the matter the reaſon of the reſolution of Barwicks Caſe, and alſo in Mack-Williams Caſe, for there was not a ſurrender of the eſtate as the King intended, which ought to be, but in our Caſe the eſtate is well ſurrendred clearly, and he thought that theſe words (modo habens) may well ſtand with the Kings intent aſwel to a ſurrender in Law, as to an actual ſurrender. The Attorney generall to the contrary. Firſt for the recital, that the information of the partie was, that the King ſhould have an actual ſurrender, and ſo was the Kings intent collected upon the information of the partie. Secondly, that here is not any actual ſurrender. Thirdly, that by conſequence it followeth that the Queen is deceived. Fourthly, here is no ſurrender in Law in this Caſe. Fifthly, although here were a ſurrender in Law, yet that is not ſufficient to make the grant good: to the firſt point he ſaid, that alwayes a familiar conſtruction ought to be made of the Kings grants, and therefore if the King grant all his portion of Tithes in D. this doth not paſs his Parſonage in D. although he had no other Tithes there; ſo if the King grant all his Titheable lands within the Mannor of B. although the lands of Coppiholders are parcel of the demeaſnes of the Mannor of B. yet theſe lands in ſuch Caſe do not paſs, Cook. lib. 1. Bozuns Caſe, and Cook lib. 1. Altonwoods Caſe fo. 46. ſo it appears by the pleading in Plowden in Wrotheſleys caſe, and in Adams caſe, and alſo in Fulmerſtons caſe; that although the antient particular eſtate be gone in Law by the acceptance of a new eſtate, yet it ought not to be pleaded as a ſurrender, and therefore it ſhall not be conſtrued that the King intended ſuch a ſurrender, which pleaders in their pleading do not accompt a ſurrender: alſo he ſaid, that in regard that the Queen ſaith, quam quidem ſurſum redditionem acceptamus it ſeems by that, that ſhe did not intend a ſurrender in Law, and therefore accepted nothing, but gave an eſtate &c. and muſt be meant ſuch a ſurrender, to which ſhe is partie by her acceptance: alſo where the words are, modo habens et gaudens, and therefore it is inferred that the Queen intended an eſtate contaning in the Patentee this is true, for although that the Queen intended an actual ſurrender precedent to be made by the Patentee, yet his eſtate continues againſt the Queen untill an acceptance of a ſurrender by her, although alſo this may be called a ſurrender like unto a ſurrender of a benefice, untill an acceptance by the ordinary: alſo although it was found that the Queen made a new leaſe or letters Patents of the ſaid Land to the ſaid Lord Seymor, yet it appears not that the new letters Patents were accepted by the Lord Seymor until a moneth after the making of them when he made a leaſe to Johnſon, and until that time without queſtion there was no ſurrender either in fact, or in Law; and where it hath been objected that theſe words (modo habens) implie only the preſent time, he ſaid that the word modo will alwayes ſignifie ſuch a time as the Verb with which it is joyned will ſignifie, and therefore Cicero ſaith, modo hoc malum in hanc Rempublicam invaſit: alſo the words Jam et nunc, are of ſuch ſignification as this word modo is: and theſe words are alwayes governed by the Verb, as Jam venit &c. ſo in the Bible the ſtory of Naaman and Gehezy, Jam modo venerunt duo, behold two young men are come to me &c. and as to the ſecond point it is clear, that here is not any actual ſurrender, for the King cannot take by an actual ſurrender without matter of Record. And therefore it

Mich. 3. *Jac.* in the *Exchequer.*

was

Mich 3. *Jac.* in the *Exche-quer.*

was holden in the Lord Stanleys Caſe, that the King took nothing although his officers, by his command did ſeiſe a mans lands into their hands for the Kings uſe: alſo he ſaid, that this appears by the 11. E. 4. and 2. Eliz. Dyer, if a man comes and ſaith, that he ſurrenders his office, and a Memorandum is recorded thereof, but the Patent is not delivered up, it ſeems this is not ſufficient to make a ſurrender, ſo on the other ſide, if the Patentee make a deed purporting aſmuch: yet it appeareth by 19. of Eliz. Dyer, if the deed be not inrolled it is a good ſurrender, and he agreed to that which hath been objected againſt him, that although that the Jury did not finde in what Court the reſtoring of the Patent was, yet it ought to be intended to be made in Chancery, but he ſaid that the Jury did not finde any time when the ſurrender was made, and that is a thing material to be found as it appears in Kemps Caſe, and Mack Williams Caſe before. Thirdly, an actual ſurrender being in the King, new letters Patents urged to be made ſhall be intended to be part of the conſideration which moved the King to a new grant, and he vouched 18. Eliz. Dyer 352. where a leaſe was recited which needed not, and in facto, the ſaid leaſe was a void leaſe in Law. And therefore the new leaſe made was alſo void à fortiori here where an actual ſurrender is recited to be made. Fourthly, he ſaid, that the ſole reaſon in Harris and Wings caſe was, that the firſt leaſe ought to have been recited, for if the King makes a leaſe, and after makes another leaſe of the ſame land to the ſame leſſee, the firſt leaſe is in being at the time of the acceptance of the new leaſe, as appears by Fulmerſtons caſe in Plowden, and therefore if in ſuch caſe there be not a good recital of the leaſe in being, the ſecond leaſe is not good, and ſo the acceptance of it makes no ſurrender of the former leaſe, and he ſaid that the recital of the Queen in the principal Caſe is a ſhewing of a former leaſe deſtroyed, and not in being, and then no actual ſurrender being made, the ſaid former leaſe contrary to this recital is in being ſtill, and ſo the recital is falſe, and conſequently the ſecond leaſe is a void leaſe, and ſo this worketh no ſurrender in Law of the old leaſe, and ſo he concluded the fourth point, that here is no ſurrender in Law, and he held that if there had been a good ſurrender in Law, yet this had not made the Patent good, and where it was objected, that a conſideration executed though valuable being falſe avoyds not a Patent, he ſaid it appears in 6. Ed. 2. tit. pardon Brook 79. that a conſideration of ſervice in the Kings Patent ought to be alledged to have been performed, nevertheleſs it appears in Sir Thomas Worths caſe in Plowden, that ſuch a particular ſervice being alledged in the Patent to be executed needs not an averment that it was performed, for the Patent is good although ſuch conſideration be falſe; but he ſaid, that in this Caſe the precedent ſurrender is the material conſideration, and therefore there ought not to be any material variance in the form of the conſideration, and ſo is the difference betwixt this Caſe, and Worths Caſe, and therefore if the King make a grant to A. in conſideration, that he had releaſed by deed inrolled, and he had releaſed by fine, here is a failing of the conſideration, that he had releaſed by deed inrolled, when as he had releaſed by fine, and ſo the grant is void, and he ſaid that as it appears by the judgement given in Welſhes Caſe cited in Altonwoods Caſe, that no equitie ought to be obſerved in the Kings grant againſt his expreſs words, ſo here no equitie ought to be obſerved againſt the King, otherwiſe then his plain words import, and therefore here his words import and intend an actual ſurrender precedent, which ought not to be ſatisfied with a ſurrender ſubſequent: and after upon the motion of the Earl of Salisbury Lord Treaſurer of England, this Caſe was referred to the Lord Privy Seal, and the Lord of Worceſter, who awarded to Sir Robert Johnſon 200. l. per annum during his life, and the life of his wife for all his intereſt; but the Earl of Salisbury Lord Treaſurer ſeemed that the matter in Law was againſt Sir Robert Johnſon, although that equitie was for him, to which opinion Tanfield chief Baron alſo inclined, in regard there was not here any ſurrender in the Caſe, but an extinguiſhment only.

Hill.

Hill. 4. *Jac.* in the *Exche-quer*.

Hill. 4. *Jac.* in the *Exchequer*.

IT was moved by one, whether the Kings Patentee of Pirats goods, ſeiſing ſome goods of Pirats ſhould pay cuſtome for them or not, and it was holden by the Barons, that he ſhould pay none, for in aſmuch as they are goods given by Law unto the King, no reaſon that he ſhould have cuſtome for his own goods.

The Caſe of Queens Colledge in *Oxford* of *Minoſmer*.

UPon a ſpecial verdict the Jury found, that Queens Colledge in Oxford was incorporated by the name of Provoſt and Schollers of the Hall of the Queens Colledge of Oxford, and they were ſeiſed in fee of an advowſon whereof the place is parcel, the Church being void, the Provoſt and Schollers aforeſaid did by the name of Provoſt of Queens Colledge in the Univerſitie of Oxford, and the fellows and Scholers of the ſame preſent one A. to the ſame avoydance, who after admiſſion &c. made a leaſe for years, yet to come to the Defendant, which was confirmed by the Patron and Ordinary, and that afterwards A. died, and the Plaintiff was preſented admitted, inſtituted, and inducted, and the Defendant entring claiming his leaſe, the Plaintiff had brought this Action. Harris Junior Serjeant for the Plaintiff ſeemed, that the preſentation of the leſſor of the Defendant was not by the true name of the Patrons, and ſo the leaſe void, and therefore the Defendant a Treſpaſſer as to the Plaintiff, and he ſaid, that the name of a Corporation is not like to a mans ſurname which groweth by nature, but is like to a name of Baptiſme which groweth by politie, and therefore ought to be truly obſerved in their grants and preſentations, as appears by 35. H. 6. fo. 5. and it is there ſaid, if a man be baptized by the name of Poſthumus, if this addition of Poſthumus be omitted, this abates the writ, but yet he agreed that variance of the name of a Corporation in ſome manner of Surpluſage hindreth not, as in Plowden Croſts and Howels Caſe, and it was in Fiſher and Boys Caſe ruled, that Cuſtos for gardianus was not any material variance, but he ſaid, that in Mich. 29. & 30. Eliz. in Banco Regis in Merton Colledge Caſe, where the title was, that the ſaid Colledge was incorporated by the name of the Colledge of Scholers of the houſe of Merton Colledge, and in a leaſe by them this word Scholers was omitted, and holden void, for that cauſe, and ſo it was betwixt one Wingate and Hall, the Dean and Canons of Windſor 22. E. 4. were incorporated by the name of Dean and Canons of the Kings free Chappel of St. George the Martyr within his Caſtle of Windſor, adjudged the variance (of the Kings and Queens free Chappel) was material although the leaſe was made in the time of Philip and Marie. And he vouched alſo 44. E. 3. fo. 3. and 38. E. 3. fo. 28. and he ſaid, that it ſeemed to him, that this preſentation by another name had gained an uſurpation by the Provoſt in his natural capacitie: alſo it ſeemeth that notwithſtanding it is not found, that Doctor Airie was preſented, inſtituted, and inducted; yet the ſpecial verdict is good enough to have judgement of his part, but he agreed, that if the truth of the Caſe had been diſcovered by the pleading, then it ought to be preciſely ſhewed, that ſuch exact finding is not neceſſary in a ſpecial verdict, as in pleading, and he vouched Allens Caſe 33. Eliz. Banco Regis where the Jury found, that Tenant for life made a leaſe for years, and found not the leſſor living nor dead, and yet in this Caſe he was intended living. and he cited alſo Haydons Caſe Cook lib. 3. and Hunts Caſe 5. Ma. Dyer 153. and he vouch't the Caſe of Weſt againſt Munſon in a writ of error in the Kings Bench,

Hill. 4. *Jac.* in the *Exchequer.*

Bench, wherein the firſt action being an Aſſiſe in the Common Pleas, it was alledged for error that the Jury did not finde the Plantiff was diſſeiſed, but only the Defendant diſſeiſed him, and yet the judgement was affirmed: Dodderidge the Kings Serjeant for the Defendant, he agreed that the name of a Corporation is eſſential to be alwayes uſed in their grants, for thereby they are diſtinguiſhed from other Corporations, but he conceived that in this Caſe here is a ſufficient ſupplying of that part of the name which is omitted, and he ſaid that although the ſpecial verdict in one place mentions the name of Queens Colledge, yet when they nominate the Corporation, it cals them the Provoſt and Scholers of the Hall omitting the words (Queens Colledge) and then they finde that the Provoſt and Scholers by the name of &c. and he ſaid, that in ſo much the Jury found preciſely that the ſame Corporation made the demiſe, it is not material by what name they made it, and therefore he ſaid that if a Jury finde, that I. S. had made a feofment by the name of R. S. this is good enough, as it was holden in Shotbolts Caſe 10, & 11. Eliz. and ſo in 13. E. 2. fitz. tit. Baſtardy pl. 25. a Jury found that two daughters were heirs, and that the Defendant was born in eſpoulals, a nonſuit, and ſo 20. Eliz Dyer 361. the Jury found that Executors received rents incident to the reverſion, and ſo aſſets in their hands, and he cited alſo Dyer 372. to the ſecond matter he thought that the omitting of the name preciſely of Doctor Airie made the ſpecial verdict vitious, and will inveigle the Judges, ſo that they cannot give Judgement, for it may be that Doctor Airie was preſented by the ſame name of Corporation as the other preſentee was, for he ſaid in truth the Caſe was ſo: alſo the ſpecial verdict is vitious, becauſe they found not any time of the Preſentation of Doctor Airie, for peradventure he was preſented by the ſaid Colledge, when he was Provoſt thereof, and then his preſentation is not good, by 22 E. 4. and to this purpoſe he cited Heckers caſe in 12. H. 8. and one Fuljambes caſe in 6. E. 6. in Bendlows, and then admitting that Doctor Airie ſhould be intended an uſurper if he ſhall avoid this leaſe: it was alſo moved, that if a Corporation by a falſe name preſent, and admiſſion, inſtitution, and induction is made by a true name, if this make a Plenartie: and Boſwel and Greens caſe Cook lib. 6. was cited: See more after fol.

The Maior of *Lincolns* Caſe. *Huddleſton* and *Hills* caſe.

IN an Attachment againſt the Maior of Lincoln, and the Steward of the Court there being Colſhil, it was ſaid, that if a writ of error be directed to an inferiour Court, they ought to execute it in all things although that their fee be not paid, nor tendered to them, and Mr. Man Secondarie to Roper ſaid, that the fee which is demanded by them ought to be indorſed upon the return of the writ of error, ſo that the Judges may judge of it if it be reaſonable, and divers preſidents warrant that accordingly.

Huddleſton and Hill againſt Bows, an Elegit upon a judgement iſſued at the ſuit of Hill, and after Hill died, and his eldeſt ſon ſued a ſcire facias upon the ſaid judgement, and holden that it lieth not.

If a man ſue in the Eccleſiaſtical Court for Tithes of Headlands, the Defendant may have a Prohibition, but by ſome he ought to ſuggeſt that they are but ſmall Headlands, and that there is a cuſtome of diſcharge in conſideration that he paid Tithes in kinde of Meadows, and in this caſe Williams ſaid, that if a man keep ſheep in one Pariſh until Shearing time, and then ſell them into another Pariſh, in this Caſe the Vendee ſhall pay the Tithe wool to the Pariſh where they were

were depaſtured in the greater part of the time of the growing of the wool. See the Tithing Table the fifth queſtion.

See Hill. 4. *Jac.* in the *Exchequer.*

Skelton againſt the *Lady Airie.*

IN a Prohibition the Plantiff ſaith, that ——— was ſeiſed of the Mannor of Calthrop, and alſo of the Rectory of Haughton Calthrop, and that the land whereof the tithe is demanded is Coppihold, and holden of the ſaid Mannor, and that this was alſo found by ſpecial verdict accordingly, and that it had been always diſcharged of payment of Tithes, and it was argued, that the Prohibition did lie, for it was adjudged Mich 34. & 35. Eliz. that a perpetual union of the Parſonage, and the land charged is a ſufficient diſcharge of the Tithes, and a preſcription may be well enough to be diſcharged of the payment of Tithes, as it appears by a Caſe put in the Arch-Biſhop of Canterburies Caſe: Cook lib. 2. George Crook of Counſel on the other ſide, and he conceived that a perpetual unitie was no perpetual diſcharge, and he ſaid there was no judgement given in the Caſe cited before, and he alſo ſaid, that the Jury in this Caſe found not a diſcharge of payment of Tithes, but only a new uſage to pay by unitie of poſſeſſion, and he cited 10. H. 7. or 6. where the manner of Tithing is ſet down; alſo he cited the Biſhop of Wincheſters Caſe Cook lib. 2. and he cited the Prior of D. Caſe to be reſolved in 40. Eliz. that a Coppiholder may preſcribe to be diſcharged of Tithes by pleading that he was alwayes Tenant by Copie to a ſpiritual Corporation: alſo he cited the Caſe of Pigot and Hern mentioned in Cook lib. 2. in the Biſhop of Wintons Caſe fol. 45. and he ſaid, that it was adjudged in Sheddingtons Caſe, that if a man preſcribe to be diſcharged of payment of Tithes by reaſon of payment of another kinde of Tithe, that this is not good.

Marie Reps againſt *Babham.*

MArie Reps by her Gardian was Plantiff againſt Babham in an action of Treſpas, the Caſe was, that a feofment was made to the uſe of husband and wife for their lives, and after to the heirs of the body of the wife begotten by the husband; and if this was an eſtate tail general in the wife, or an eſtate in ſpecial tail to the husband it was demurred: Richardſon argued that it was a general eſtate taile in the wife, and that the husband had but for life, and he vouched 11. E. 3. Fitz. tit. Formedon in proof thereof: Henry Yelverton thought it was an eſtate tail in both, and he ſaid, that the Caſe in the 11. E. 3. is not like to this Cate, for there the Prior cannot take but as Tenant in Common, and he vouched of his part 17. E. 2. title ——— where the inheritance is limited no more to the body of the one then of the other, there is an eſtate tail in both out of which Littleton took his Caſe; and Fitz. nat. Brevium fol. 193. G. where he puts the very Caſe in effect 41. E. 3. fol. 24. 3. E. 3. fo. 90. Rips Caſe 21. E. 3. fo. 41. 4. E. 3. fo. 145. and 15. Elizi. in the Common Pleas was, that a guift was made to husband and wife, and to the heirs of the bodie of the husband, of the body of the wife begotten, and this was holden an eſtate tail in both, if the word husband followeth immediately, the word heir it is an eſtate tail in that perſon only, but if the word (with) be interpreted it altereth, but the word (or) interpoſed maketh no difference, no more then if the word husband had immediately followed 19. H. 6. 75.

Paſch. 4. *Jac.* in the *Exchequer.*

Richards againſt *Williams.*

IN an action of Trover and converſion, betwixt Richards and Williams for two loads of Barley, the Defendant ſaith, that the Dean, Arch-Deacon, preſident, and Chapter of Landaffe was ſeiſed of a Perſonage in fee, and by the ſaid name had leaſed unto the Defendant, to which the Plaintiff replied, that the Arch-Deacon and Chapter of Landaffe were ſeiſed in fee, and leaſed unto him without that, that there was any Corporation as Dean, Arch-Deacon, preſident, and Chapter, whereupon the Defendant demurred: George Crook argued, that the Replication is good, and he made two points. Firſt, that here is a good inducment to a Traverſe. Secondly, that there ought to be a Traverſe in the Caſe: to the firſt he ſaid, that if the Defendant intitle himſelf by one name, and the Plaintiff by another name, here is a good inducement for a Traverſe, and he cited Croft and Howels Caſe in Plowden, where the Cooks were incorporated: by E. 4. by the name of Maſter and Governous; and they made a leaſe of lands by the name of Maſter and Wardens, and this was holden a void leaſe, and he vouched to this purpoſe alſo 21. E. 4. fol. 56. where a Corporation was of Dean and Vicears, and a leaſe was made by them by the name of Dean and Prieſts, and 30. Eliz in the Kings Bench, and Windgate Hals Caſe, and Eaten Colledge Caſe in 3. & 4. Ma. Dyer 150. 2. that in this Caſe the Plaintiff ought to take a Traverſe, and he cited 44. Aſſiſe pl. 9. & 44. E. 3. fo. 26. where one pleaded, that the Prior of the Hoſpital of St. &c. and the other ſaid that the Prior of the houſe &c. and an averment was made, that it was known by the one name and by the other, or otherwiſe the plea had not been good without a Traverſe: alſo he cited the Caſe of Raunce, and the Dean and Chapter of Chicheſters Caſe in the Kings Bench, where Raunce took ſuch an averment, or otherwiſe he ought to have taken a Traverſe, and he cited the Lord Barleys Caſe in Plowden, and 5. H. 7. and he ſaid, that the Plaintiff by his Replication alledged other matter in fact then the Defendant did, and therefore there ought to be a Traverſe 12. E 4. alſo if a man brings an action by the name of Gardian, and the other ſaith he is Prior, this is not good without a Traverſe that he is not Gardian, 4. E. 4. fo. 6. 32. H. 6. fo. 4. 38. E. 3. fo. 34. an accompt ſuppoſing the Defendant one of the company of M. and it is there ſaid, that the Defendant not being ſued in the action, as one of the company, but this is only uſed for an addition, therefore there ought to be no Traverſe: and after this argument Tanfield chief Baron ſaid, that the argument now made touched not the point in this Replication, for the point is not if there needeth a Traverſe in the cauſe, but what thing is Traverſable therein, videlicet, what is the principal matter alledged for the Defendant, and therefore he put this Caſe, Prior and Covent of D. claim an Annuity by preſcription, the Defendant ſaith, that within time of memory they were incorporated by the name of &c. in regard that it is within time of memory, Quere what thing is Traverſable here, that is to ſay, what thing is the principal matter: and after at another day Walker to the contrary; and firſt he ſaid, that it is not alledged in fact by the Defendant, but by implication. That there was any ſuch corporation as Dean &c. and that which is alledged, but by implication ought never to be Traverſed, and he vouched Dyer 365. & 27. H. 8. 27. The alledging that the Dean &c. is but matter of inducement to the Plea in Bar, and therefore is not Traverſable, for the leaſe ſuppoſed to be made by them is the matter of ſubſtance, and he vouched a Caſe between Richarſon and Sir George Heart 31. Eliz. to be, where in an action againſt the Sheriff, for ſuffering an other to eſcape who was in Execution at the Plaintiffs ſuit, and the Sheriff ſaid, that he never arreſted him, and he vouched alſo 10. H. 6. fo. 13. thirdly, he ſaid, that

that the Plantiff doth not Traverſe in the ſame manner as is alledged by the Defendant, and therefore the Traverſe is not good, and he vouched 27. H. 8. fo. 26. where in Treſpaſs the Defendant ſaith, that I. S. is ſeiſed in fee &c. the Plantiff ſaith, that his father was ſeiſed in fee, without that that he had, any thing, this is no good Traverſe, and Thompſon thought it no good Traverſe; it is alledged in fact for the Defendant, that ſuch a Corporation made a leaſe, therefore there was ſuch a Corporation, and he ſaid that a man may Traverſe by a Negative prper, or by a Negative prægnant 9. H. 7. & 27. H. 6. where a Treſpas was brought by I. and G. his wife, the Defendant ſaid, there is no ſuch G. his wife, and this is good: and ſo in 40. E. 3. fo. 36. & 37. 11. H. 4. fo. 10. 45. E. 3. fo. 6. in a quare impedit præſentare to the Church of D. the Defendant ſaith, that there is no ſuch Church, 22. E. 4. fo. 34. an action was brought againſt I. S. Maior of D. and he Traverſed that there is no ſuch Corporation; Tanfield chief Baron ſaid, that if in an action of Treſpaſs the Defendant ſaith, that I. S. was ſeiſed in fee, and infeoffed him without that &c. and the Plantiff ſaith, that I. S. was ſeiſed in fee, and infeoffed me without that, that there was any ſuch perſon as I. S. in being, this is no good Traverſe: Hern Baron ſeemed that this Traverſe is good in the principal Caſe, but he was once of Counſel with the Plantiff; and it was moved that the Caſe ſhould be Compounded. Paſch. 4. *Jac.* in the *Exchequer*.

An Information againſt *Page*.

IN an Information againſt Page, and another upon the Statute of 3. & 4. E. 6. cap. 21. for buying of Butter, and ſelling of the ſame by retail contrary to the form of the Statute, upon not guiltie pleaded, the Jury found one of them only guiltie both of buying and ſelling, and the other not guiltie: and it was moved, that no judgement may be given in this Caſe, in aſmuch as the action is conceived upon a joynt buying by two: and it appeareth that this is but by one, but it was argued, that judgement ought to be given, for it cannot be intended in Law, as to this purpoſe a joynt buying, for the wrong is ſeveral, and in proof thereof was cited 36. H. 6. fo. 27. the 11. H. 4. Dyer fo. 194. or 195. accordingly; alſo this action is for a wrong done to the Common-wealth, which is a ſeveral wrong by either; and to this purpoſe was cited 40. E. 3. fo. 35. & 36. H. 6. cited before, and 5. H. 5. fo. 3. where an action de malefactoribus in Parcis was brought againſt three, and one only was found guiltie, and judgement was given againſt him, and there is no difference as to this purpoſe between this Caſe, and an action of debt upon a joynt contract made by two, as appeareth by 21. H. 7. and Partridges Caſe in Plowden, where it is ſaid, that the bargaining is but matter of conveyance to the action, and according unto this was cited 33. H. 8 Brook tit. iſſue: and alſo 28. H. 6. fo. 7. and 36. H. 6. fo. 29. and a Caſe was adjudged in Mich. 35. & 36 Eliz. in the Kings Bench, which proves the ſame alſo: where an information was brought ſuppoſing the Defendant to have bought Cattle of two, contrary to the form of the Statute, and it was found that he bought them but of one, and yet judgement was given: Hitchcock to the contrary. and he argued, that no judgement ought to be given, for he ſaid, that if an information be brought againſt two upon the Statute of uſury, and one only is found guiltie, yet no judgement may be given in this Caſe, to which the Court agreed: and he cited Dyer 160. 5. Ma. where two ſued in the Court of Admiraltie one, for an offence triable within the bodie of the Countie, contrary to the Statutes of 13. & 15. of R. 2. and an action was brought againſt one of them only, and good, and he vouched alſo 22. Eliz. Dyer fo. 370. 2. R. 3. fo. 18. where three brought an account againſt one, he pleads he was never their receiver, and the Jury found &c. and he cited a caſe to this purpoſe, an information was brought againſt two for buying of Cattle of one B. and for ſelling of them contrary to the form of the

Paſch. 4. *Jac.* in the *Exchequer.*

Statute, and in this Caſe the Jury found the Defendant not guiltie for the buying them of B. but that he bought them of one P. and upon an attaint of the Jury the opinion of the Court was in this caſe, that though the verdict was affirmed, yet no judgement ought to be given thereupon, and this was the true Caſe of Lidwood and Pearpoint cited before on the other ſide, as George Crook ſaid.

York and *Allein.*

A Man recovered damages in an action upon the Caſe againſt B. who at the time of the judgement was joyntly ſeiſed in fee with C. and that after B. and C. alienes, the partie who recovered is outlawed, the King eight years after this outlawry extends the moitie of this land for theſe damages recovered againſt B. and it was moved, if he ſhall have them in extent for them, or not, alſo if he ſhall have it without a ſcire facias; and the Barons were clear in opinion that he ſhall have it in extent, for it was liable to the extent of the partie outlawed before the Alienation, and then when it comes to the King by the outlawry, although it be after the Alienation, it continueth extendible for the King, although the Alienation was before the outlawry.

It was admitted by all the Barons, that if a Coppiholder ſurrender to the uſe of a younger ſon, and dies, that this younger ſon cannot bring an action until admittance, but if the Copihold had deſcended to the heir, he may have an action before admittance: ſee Cook Coppihold Caſes lib. 4. fol. 22. and alſo it was ſaid, that all Coppiholders of the Kings Mannors may now have admittance into their Coppihold eſtates well enough, and the order for the ſtay of their admittances which was made heretofore is now diſſolved and quaſhed.

Dennis againſt *Drake.*

DEbt was brought by Dennis againſt Drake Sheriff for an eſcape, a man had judgement in the Kings Bench, and a writ of error was brought within the year, and after the year paſſed the judgement was affirmed in the Exchequer Chamber, and within a year after the affirmation a Capias iſſued to the ſaid Drake the Sheriff, who took the partie and ſuffered him to eſcape, and this being the Caſe upon the declaration in this action the Defendant demurred, and all the Barons ſaid, that there is no queſtion but a Capias may well iſſue within the year after judgement affirmed without a ſcire facias, though it be more then a year after the firſt judgement, and it ſeemed to them, that there was no difference, though that the writ of error was not brought untill after the year of the firſt judgement given, although in ſuch caſe there be an apparant neglect in the partie, who had not ſued his execution within the year, and therefore he was enforced to a ſcire facias thorough his neglect, whereas if error had been brought within the year, he had never been driven to his ſcire facias in this Caſe, yet for aſmuch as when the judgement is affirmed, this is all one as a new judgement, they conceived it made no difference, and Tanfield chief Baron ſaid, that it had been often ſo judged in the Kings Bench.

It was ſaid here, that if a man be inſtituted to a benefice he ought to pay the firſt fruits before induction by the Statute, but by the Common Law it was otherwiſe, for he is not to have the temporalities until induction, and therefore he could not pay the firſt fruits, but another perſon cannot be preſented to this benefice during the continuance of the firſt inſtitution, ſee Cook lib. 4. in Digbies Caſe fol. 79. that the inſtitution to a ſecond benefice is a preſent avoydance of the firſt.

Saint

Paſch. 4. *Jac.* in the *Exche-quer.*

Saint *Saviours* in *Southwark* in an Information.

IN an Information of intruſion againſt A. and B. the Defendants claim and juſtifie by force of a leaſe made unto them by the Queen of the Rectory of Saint Saviours in Southwark in the year 33. Eliz. and the truth of the Caſe was, that the Church-wardens of the Church of Saint Saviours, and their ſucceſſors were incorporated by letters Patents, in which Patents, it was contained that the Pariſhioners or the greater number of them, every year ſhould elect two Church-wardens, and that the ſaid Church-wardens and their ſucceſſors are a Corporation capable to take, purchaſe, and ſell, and after the ſaid Charter ſo made in regard of the great number of the Pariſhioners of the ſaid Pariſh, the Biſhop of the Diocels made an order, that the Pariſhioners ſhould appoint a certain number of the ſaid Pariſh to be called Veſtrie men, the which Veſtrie men, ſhould have the election of the Church-wardens from time to time, for and in the name of the whole Pariſh, and after it was uſed, that the ſaid Veſtrie men elected the Church-wardens accordingly for a long time, and that A. and B. being ſo elected the Queen Anno 33. Eliz. made a leaſe to them for years by the name of A. and B. Church-wardens of the Pariſh of Saint Saviours &c. and their ſucceſſors rendring rent, and this appearing to be the Caſe upon evidence to the jury; the Barons moved two points. Firſt, if the election made by the Veſtrie men were a good election to make them a Corporation capable to purchaſe within the intent of the Kings Charter, in ſo much that ſaith, that they ſhall be elected by the greater number of the Pariſhioners, and here but a ſmall number that is the Veſtrie elected them; and as to that it ſeems by the Barons, that in regard it was not given in evidence that others of the Pariſh to a great number did withſtand, or gain-ſay the ſaid election or nomination, it being made at a day uſual and place certain, and therefore all the Pariſhioners by intendment were knowing of it, or might by intendment of Law have been preſent at the ſaid election, it being in an open place where every Pariſhioner might make reſort, and did not, therefore it was held that this election was as good as if all the Pariſhioners had met and elected them, for it were hard in Law, if the election by theſe that are preſent ſhould not be good when the reſidue are wilfully abſent, and therefore Tanfield chief Baron cited a Caſe, where the King did grant that the Pariſhioners of Wallingford ſhould be a corporation to bargain and ſell, and that the greater number of the Pariſhioners there did make leaſes and eſtates, and there was an uſage, that at the time of meeting for the making of any ſuch leaſes by them, they did uſe to Ring a bell, by the which notice was intended to be given of the aſſembly: and that after ſuch Bell rung 20. of the Pariſhioners then preſent did make a leaſe, there being 100. others in the Pariſh not preſent, and yet this was adjudged in the Court 32. Eliz. to be a good leaſe, and he ſaid, that if there be a day and place by uſage certain for their meeting, in ſuch caſe there needeth no warning; and therefore in the principal caſe, the election was good, but as for any order made by the Biſhop that had been of no force to this purpoſe. Secondly, it was moved, that although this were not good to make them Church-wardens within the intent of the Kings Charter of Corporations, yet that this leaſe made by the King, ſhould amount to make them a Corporation, and to a leaſe unto them alſo, that being by intendment for the benefit of the King, inaſmuch as a rent is reſerved; like as when the King makes a leaſe, to the honeſt men of Iſlington rendring rent, but unto this Tanfield the chief Baron ſaid, that he held, that this leaſe ſhould not make a corporation where the King conceived, that there was no corporation before, but

that

Mich. 4. *Jac.* in the *Exche-quer.*

that the King ſhould rather be ſaid to be deceived, for he took a difference where there is a reputed Corporation in being and where there is not, and thereupon the Barons directed the Jury to give a general verdict.

In this caſe it was agreed by the Barons, that if the King make a leaſe for years to A. and after he makes a leaſe of the ſame land to A. for more years, this ſecond leaſe is meerly void, and therefore the acceptance of it ſhall not cauſe a ſurrender of the other leaſe, and they ſaid, that it was holden accordingly in Harris, and Wings Caſe; ſee Plowden, Fulmerſton and Stewards Caſe, in which caſe the ſecond leaſe was once good, although it was void after by relation.

It was held for Law, that if a man do make a feoffment to A. to the uſe of B. for the life of C. and that if B. and C. die, then the remainder over, this is a Contingent remainder by Boraſtons Caſe in Cook lib. 3. and alſo by Colthirſts Caſe in Plowden.

It was alſo held, that if a man doth in conſideration, that his ſon ſhall marry the daughter of B. covenant to ſtand ſeiſed to the uſe of his ſon, for life, and after to the uſe of other his ſons, in reverſion or remainder, theſe uſes thus limited in remainder, are fraudulent againſt a purchaſer, though the firſt be upon good conſideration, viz. for marriage, alſo it was holden, though the conſideration of marriage be a good conſideration, yet if a power of revocation be annexed to it, it is void as unto ſtrangers.

By Standon and Bullocks Caſe cited in Twins Caſe Cook lib. 3. if a man reſerved a power of revocation by aſſent of a ſtranger, this is fraudulent, but if there be a conſideration to be paid before the revocation it is otherwiſe.

An Information againſt *Bates* Mich. 4. *Jac.* in the *Exchequer.*

AN Information was exhibited againſt Bates a Merchant of the levant, and it was recited, that the King by his letters Patents under the great Seal had commanded his Trealurer, that he command the cuſtomers, and recievers, that they ſhould ask and receive of every Merchant denizen, who brings within any Port within his dominions, any Currants five ſhillings a hundred, for impoſt above two ſhillings and ſix pence, which was the Poundage by the Statute of every hundred, and it was alledged; that Bates had notice thereof, and that he had brought in Currants into the Port of London, and refuſed to pay the ſaid 5. s. in contempt of the King, whereunto Bates came, and ſaid, that he is an Engliſh Merchant, and an venturer and a denizen, and that he made a voyage to Venice, and there bought Currants, and imported them into England, and he recited the Statute of the firſt of King James cap. 33. which grants 2. s. 6. d. for Poundage, and he ſaid, that he had paid that, and therefore he had refuſed to pay the 5. s. becauſe it was impoſed unjuſtly, and unduly againſt the Lawes of the land, whereupon the Kings Attorney demurred in Law; this matter had been divers times argued at the Bar, and at the Bench, by Snig, and Savil, Barons, and now by Clark and Flemming chief Baron whoſe arguments I only heard, and Clark, who argued firſt this day ſaid, that this Caſe being of ſo great conſequence great reſpect, and conſideration is to be had, and it ſeemeth to me ſtrange, that any ſubjects would contend with the King, in this high point of Prerogative; but ſuch is the Kings grace, that he had ſhewed his intent to be, that this matter ſhall be diſputed and adjudged by us according to the antient Law and cuſtome of the Realm, and becauſe that the judgement of this matter cannot be well directed by any learning delivered in our Books of Law, the beſt directions herein are preſedents of antiquitie, and the courſe of this Court, wherein all actions of this nature

nature are to be judged, and the Acts of Parliament recited in arguments of this Caſe prove nothing to this purpoſe, the beſt caſe in Law, is the Caſe of Mines in Mr. Plowden Com. where this ground is put, that the precedents of every Court, ought to be a direction to that Court, to judge of matters which are aptly determinable therein, as in the Kings Bench for matters of the Crown, in the Common Pleas for matters of inheritance and Civil contracts, and in the Exchequer for matters of the Kings Prerogative, his revenues, and government, and as it is not a Kingdome without ſubjects and government, ſo he is not a King without revenues, for without them he cannot preſerve his dominions in peace, he cannot maintain war, nor reward his ſervants, according to the ſtate and honor of a King, and the revenue of the Crown is the very eſſential part of the Crown, and he who reudeth that from the King pulleth alſo his Crown from his head, for it cannot be ſeparated from the Crown, and ſuch great Prerogatives of the Crown, (without which it cannot be) ought not to be diſputed, and in theſe caſes of Prerogative the judgement ſhall not be, according to the rules of the Common Law, but according to the Preſidents of this Court wherein theſe matters are diſputable and determinable, as for Example, an action of accompt lies not by the Common Law againſt him, who had the land of the accomptant by mean conveyance, but if one be an accomptant to the King, and had land in fee, and alien it unto A. who alien it unto B. B. by reaſon of this land ſhall be charged with this accompt: in 14. E. 3. a Coroner was elected by the Kings writ as he ought to be, by the Countie, and after he was amerced, and becauſe he was not ſufficient to anſwer the Amercement the Countie was charged therewith, and that appears of Record here, and in 30. E. 3. *Rot.* 6. as appears alſo of Record, in this Court one William Porter was Magiſter monetæ, and had received Bullion of divers Merchants, and Coyned it in the Kings Mint, and did not reſtore the Coyne to the Merchants, but was inſufficient, and the King paid the Merchants, and inquired of the ſuerties for the Coyne, and it was found that he had none, then it was inquired who recommended him unto the King, and it was found by whom he was recommended: and they who only recommended him as friends, were charged with the Debt, and if one be outlawed in a perſonal action, and Debt is due to him upon a contract, this ſhall be forfeited to the King, and this is ordinary by the Preſidents of this Court, and yet this ſeems to be contrary to Law, and is againſt our Books, and the Kings Debtor ſhall have a quo minus againſt Executors upon a ſimple contract, and therein he cannot releaſe, nor be non-ſuited, and I put theſe caſes to prove, that the preſidents of this Court ought to be purſued and obſerved, although they ſeem to croſs the Common Law, and the Books thereof: a caſe was here betwixt the King and Jourden, Jourden was receiver, and ſold his office to one D. and he not being able to pay Jourden for his office at the day limited, it was agreed, that Jourden ſhould come to the next receipt, and when D. received the Kings money, that Jourden ſhould take it for his office, which was done accordingly, after D. was indebted to the King, and this matter appearing as above &c. Jourden was charged with the money which he had received, and as Stamford in his firſt cap. of Prerogative ſaith, that the King is the moſt worthy part of a Common-wealth ſo is he the preſerver, nouriſher, and defender of the people, and true it is, that the weal of the King is the publick weal of the people, and he for his pleaſure may afforreſt the wood of any ſubject, and he thereby ſhall be ſubject to the Law of the Forreſt, and he may take the proviſion of any man by his Purveiour, for his own uſe but at reaſonable prizes, and without abuſe, the abuſe of which officer hath been reſtrained by divers Statutes, and the King may take wines for his proviſion, and alſo Timber for his Ships, Caſtles, or houſes in the wood of any man, and this is for publick benefit, and the King may allay, or inhaunce Coyne at his pleaſure, for the plentie of the King is the peoples peace, and theſe impoſts are not only for the benefit of the people, and for the Kings profit, but are

Mich. 4. *Jac.* in the *Exchequer.*

alſo

Mich. 4. *Jac.* in the *Exchequer.*

alſo impoſed many times for the increaſe of Merchandiſe, and Commerce, as the Statute of, Aulnageors made in the 2. E. 3. cap. 14. which was made principally to make cloathes more Vendible, and ſo Corporations are granted by the King with immunities and priviledges, and to ſeclude other ſubjects from them, are well limited and good, for it is for the increaſe of the peoples wealth, and thereby the Kings revenue is increaſed, and ſometimes there is contained in grants a Prohibition to other ſubjects, that they uſurp not upon the priviledges of ſuch Corporations upon a pain, as in the cuſtome of Forraign bought, and Forraign ſold in London, and York, and divers cuſtomes are permitted to ſuch Corporations, as in the Chamberlain of Londons Caſe, Cook 5. and the breach or violation of theſe cuſtomes is a decay of the Corporations, and ſo an impairing of the revenues of the Crown, and therefore the King may make them, and alſo give them priviledges, and make inhibitions to others, not to Uſurp upon them: King Edward the third in the ſixteenth year of his Raign proclaimed, that no man ſhould ſell Wool-fels, or Leather under ſuch a price, ſo that theſe ſtaple commodities might not be debaſed, and this at no place, but at Northampton and Anwick, and this proclamation was the cauſe wherefore the Merchant in 43. Aſſiſe 38. was puniſhed for uſing the ſlight to abate the prices, and for preſidents in this matter of Impoſt, there are many of antiquitie, and firſt for Wines in 16. E. 1. the cuſtome for a Tun of Wine was 4. s. and in 21. and 24. E. 3. it was increaſed to——————and 12. 13. & 14. of H. 8. it was increaſed to 17. s. the Tun, and after in the 4th. of Mary it was increaſed to 4. Marks, and as it appears by the Records of this Court, it was anſwered upon accompt, for all this time according to that rate, and it is apparant, that no act of Parliament gave this to the King, but that it was impoſed by his abſolute power, and ſhall it now be doubted if it be lawful? God defend Piſage, that the King ſhall have one Hogs-head before the Maſt, and another Hogs-head behinde, is not given to the King by any Statute, but was only an Impoſt by the Kings power, the Impoſt upon cloathes in 31. E. 1. was two ſhillings for a Scarlet, and 18. d. for other cloathes in Grain, and after in the 37th. year of E. 3. it was raiſed again and in the 37. E. 3. an Act was made for the length of cloathes, in the 33. H. 8. it was raiſed again, and in the time of Queen Mary, becauſe that the making of ſo many cloathes made the Impoſt of Wooll to be of ſo ſmall value, therefore the Impoſt of every cloath was raiſed by her to a noble, and in the firſt of Eliz. an Impoſt was impoſed, for the overlength of cloathes, and it appears in 30. *E.* 3. that the Impoſt of one Cloath was for a ſtranger 2. s. 8. d. and for a denizen 1. s. and all for cloathes: another Impoſt was for Woolfels, and Leather, the 31. E. 1. it was for Wooll half a Mark for a Sack, and after that to 10. s. and in the time of E. 3. to 20. s. and after to 40. s. and after to 3. l. and ſo of Woolfels and Leather, and as the benefit and price of commodities did riſe, ſo was the Impoſt raiſed, and no Act of Parliament for the firſt impoſing, and increaſe thereof, and ſo much for Woolfels and Leather. Now for allom, upon every hintal of allom was impoſed 3. s. 4. d. which was anſwered upon accompt, and in the caſe of Smith it was not doubted if it ſhall be paid as here it is, but if it were contained in Smiths Patent or not, the impoſition impoſed upon Coles, now the 1. s. increaſe is paid, the impoſition upon Tobacco was never doubted to be unjuſt as this is, and ſo much for preſidents. And now for Statutes, the Statute of Magna Charta cap. 30. which was objected, that thereby all Merchants may have ſafe &c. to buy and ſell, without all Tolluets, but there is a ſaving, viz. by the antient and old cuſtoms: the Statute of Articuli ſuper chartas cap. 2. hath a ſaving in the end of it, that the King or his Councel did not intend thereby to increaſe the antient prices due and accuſtomed; ſo are all the other Statutes of Purveyors, the Statute of the 45. E. 3. cap. 4. which hath been ſo much urged, that no new impoſition ſhall be impoſed upon Woolfels, wooll, or Leather, but only the cuſtome and ſubſidie granted to the King, this extends only to the King himſelf

himſelf, and ſhall not binde his ſucceſſors, for it is a principal part of the Crown of England, which the King cannot diminiſh, and the ſame King 24. of his Raign granted divers exemptions to certain perſons, and becauſe that it was in derogation of his ſtate imperial, he himſelf recalled, and annulled the ſame; as to that which was objected, that the Defendant had paid poundage granted by the Statute of the firſt to the King, that is nothing to this purpoſe, for that is a ſubſidie, and not a cuſtome, for when any impoſition is granted by Parliament, it is only a ſubſidie, and not a cuſtome, for the nature thereof is changed, and the impoſt of Wine is paid over, and above the poundage, and ſo ſhould it be here, and whereas it was objected, that if it were in the time of war, it is ſufferable, but in peace not, this ſeems no reaſon, for the King cannot be furniſhed to make defence in war, if he provide not in peace, and the proviſion is too late made, when it ought to be uſed, and as to that which was ſaid, that the ſubject ought to have recompence, and valuable ſatisfaction, it ſeemeth to me that he had; for he hath the Kings protection within his Ports, and his ſafe conduct upon the land, and his defence upon the Sea, and all the Ports of the Realm belong to the King, and in this Court, there is a preſident where one in the time of Queen Eliz. claimed to have a Port to himſelf as his own, and it was adjudged that he could not, for it belonged to the Queen, and it could not be ſevered, and the King only ſhall have the cuſtomes, for landing throughout all the land, and in the 17. of E. 3. there is a notable preſident, where he reciteth all the benefits, which the ſubject had in his forraign Traffick, by the Kings power and protection, and therefore he impoſed a new Impoſt: the writ of ne exeat Regnum comprehends a probabition to him to whom it is directed, that he ſhall not go beyond the Seas, and this may be directed at the Kings pleaſure to any man, who is his ſubject, and ſo conſequently may he prohibite all Merchants, and as he may prohibite the perſons, ſo may he the goods of any man, viz. that he ſhall export or import at his pleaſure, and if the King may generally inhibite, that ſuch goods ſhall not be imported, then by the ſame reaſon may he prohibite them, upon condition or ſub modo, viz. that if they import ſuch goods: that then they ſhall pay &c. and if the general be lawful the particular cannot be unjuſt, and the words in the writ of ne exeat Regnum, viz. et quam plurima nobis, et Coronæ noſtræ præjudicialia ibidem proſequi intendis are not traverſable by the ſubject, but he ought dutifully to obey his Soveraign: as to that, which is ſaid, that this command to the Treaſurer is not ſufficient under the great Seal, that is otherwiſe, for before the Statute of R. 2. for matter of cuſtomes no command was directed to the Treaſurer, but alwayes the King ſignified his pleaſure to his cuſtomers under his privie Seal, and this gave authoritie to them to collect cuſtomes, and the ſame authoritie is given now to the Treaſurer, and derived from him to the cuſtomers, as to that which is ſaid, that the concluſion is evil, becauſe it is in contempt of the King, without doubt it is a contempt, for the King may inhibit Traffick into any part of the world, if he will, or inflict a pain upon any, who ſhall Trade into ſuch place inhibited, ſo may he do upon any commoditie either inhibit it generally, or upon a pain or Impoſt, and if a ſubject uſe the Trade after ſuch inhibition, or import his wars, and pay not the impoſt, it is a contempt, and the King ſhall puniſh him for it, at his pleaſure; and as to that which is ſaid, that it is a burthen to the Merchant, that is not ſo, for the burthen layeth it only upon the better part of the ſubjects, and if it were a burthen, it is no more then they themſelves impoſed, which was in their hands by commiſſion in the time of Queen Eliz. and they have raiſed the prices to ſubjects more then the value of the Impoſt; and it is not to be intended, that the King by any Impoſt will prejudice the cauſe of Merchants, for the Trade in general is to him more beneficial, then any particular Impoſt: the caſe of the 11. and 14. H. 4. of Aulnageor, is not to be compared to this Caſe, for there the King had made a grant to a ſubject, and it was alſo of a thing which was granted before to a Major, and alſo of a commoditie

Mich. 4. *Jac.* in the *Exchequer.*

Mich. 4. *Jac.* in the *Exchequer.*

within the land, and not transported, and for the case of Darcy: for the monopoly of Cards it is not like, for that is of a commoditie within the land, and betwixt the Patentee, and the King, and not between the King, and the subject, and as to the exception taken to the Information, that it is Ultr. and doth not prescribe, this needeth not, for it is a prerogative wherein lieth no prescription, for every prerogative is as antient as the Crown, and as to the conclusion of the Information it was objected, that it is not good, for the informer ought to pray the forfeiture; but this belongs to the Court to Judge of what shall be lost or forfeited, the offence being a contempt, and therefore the conclusion good enough, and so for all these reasons, judgement shall be given for the King. Flemming chief Baron, touching the exceptions to the Information they are of no force, for the first Ultrat &c. it hath been well said, that the King needs not prescribe in any prerogative, for it is as antient as his Crown is, 2. E. 3. and for the conclusion viz. that he in contempt &c. that deserves no other answer, but that which hath been given before, for it is enough, without doubt warranted by infinite presidents, but for the Bar, it is an increase of the Defendants contempt, and no sufficient matter to answer an indigested and confused tale, with an improper and disobedient conclusion, and there is in it multa non multum, but the conclusion is without president, or example, for he saith, that the imposition which the King had laid, is indebite, injuste, et contra leges Angliæ imposita, and therefore he refused &c. in the case of Smith for Allom, the conclusion was moderate, and beseeming a subject, judgement if he shall have Impost by his grant, and in the case of Mines, the Defendant being a great Peer of the Realm, concluded upon his grant and interest in the soyl, and that he took the Mettal, as it was lawful for him, and did not confront his Soveraign with terms of injustè, indebitè, and the like, and the King as it is commonly said in our Books cannot do wrong, and if the King seise my land without cause, I ought to sue to him in humble manner. Humillimè supplicavit &c. and not with such terms of opposition in the Information, and all his matter had been saved to him then as well as now, or he might have pleaded his matter, and said wherefore he refused, as it was lawful for him: but for the matter it is of great consequence, and hath two powerful objects, which it principally respecteth, the one is the King, his power, and prerogative, his Treasure, and the Revenues of his Crown, and to impair and derogate from any of these was a part most undutiful in any subject, the other is the Trade and Traffick of Merchandise, transportation in and out of the land of commodities, which further publick benefit ought much to be respected, and nourished as much as may be; the state of the question is touching a new custome, Impositions or customs, are duties or summs of money newly imposed: by the King without Parliament upon Merchandise, for the augmentation of his revenues, all the questions arising in the case are, aut de personis, de rebus, vel de actionibus, viz. form and proceeding, the persons are first the King, his power, and authoritie. Secondly, not Bates the Defendant, nor the Venetians, but all men who import Currants, the imposition is properly upon Currants, and for them, and is not upon the Defendant, nor his goods, who is a Merchant, for upon him no imposition shall be, but by Parliament. The things are Currants a forraign commoditie, and a Victual; the 5. s. for impost which is said to be great, the action formed or Process is the command by the great Seal, and the word therein are Petere et recipere, if they be sufficient, and if good without Proclamation or other notice, and how notice shall be given, and if it be good without an ad quod damnum, and the case of Mines in Plowden, which is the sole case in the printed Books of Law, to this purpose hath in it, foure reasons of the judgement. First, the excellency of the King, or his person. Secondly, the necessitie of Coyn for his state. Thirdly, the utilitie of Coyn for commerce. Fourthly, the inconvenience, if the subject should have such royal possessions; and these reasons are not extracted out of the Books of Law, but are only reasons of poli-

cy,

cy, for Rex eſt legalis et politicus, and reaſons pollitick, are ſufficient to guide Judges in their arguments, and ſuch caſes and preſidents are good directions in caſes of judgement, for they are Demonſtrations of the courſe of antiquitie, where upon my judgement ſhall conſiſt upon reaſons politick, and preſidents; the caſe in Dyer 1. Eliz. fo. 165. was not like to the caſe in queſtion; but only a conference, and the caſe there was, for an impoſt upon cloath, a domeſtick commoditie; in this caſe, are recited their Grievances, but it was paid, and it is denied here; but there was no reſolution thereof: at the ſame time, was the impoſt of Wines increaſed, and paid, and no petition or complaint thereof, and the cuſtome of Englands commodities, were at the firſt impoſed by the Kings will, for no Statute giveth them, viz. for Wool, Woolfels and Leather, and it was called the great cuſtome, and that it was paid, it will not be denied, and yet now it is doubted, if the King can impoſe it upon forraign commodities, the King may reſtrain the perſon as it is in Fitz. Nat. Br. à fortiori he may reſtrain the goods; there was no cuſtom for home Commodities, but the great cuſtom aforeſaid, which was after increaſed by Parliament, which was called the petit cuſtome: it is a great grace in the King to the Merchants, that he will command, and permit this matter to be diſputed between him and his ſubject, and the moſt fit place is in this Court, and the beſt rules herein are the preſidents thereof, and pollitick reaſons, which I ſhall give, and apply them to the particulars before recited, and firſt, for the perſon of the King, omnis poteſtas à deo, et non eſt poteſtas niſi pro Bono, to the King is committed the Government of the Realm and his people, and Bracton ſaith, that for his diſcharge of his office, God hath given to him power, the Act of Government, and the power to Govern: the Kings power is double, ordinary and abſolute, and they are ſeveral Lawes and ends, that of the ordinary is for the profit of particular ſubjects, for the Execution of Civil Juſtice, the determining of Meum, and this exerciſed by equitie and Juſtice in ordinary Courts, and by the Civillians is nominated Jus privatum, and with us Common Law, and theſe Laws cannot be changed, without Parliament, and although that their form and courſe may be changed, and interrupted, yet they can never be changed in ſubſtance: the abſolute power of the King is not that which is converted or executed to private uſe, to the benefit of any particular perſon, but is only that which is applied to the general benefit of the people, and is Salus populi; as the people is the body, and the King the head; and this power is guided by the Rules, which direct only at the Common Law, and is moſt properly named pollicy and Government, and as the conſtitution, of this body varieth with the time, ſo varieth this abſolute Law, according to the wiſdome of the King, for the Common good, and theſe being general rules and true as they are, all things done within theſe rules are Lawful; the matter in queſtion is materiall matter of ſtate, and ought to be ruled by the rules of pollicy, and if it be ſo, the King hath done well to execute his extraordinary power; all cuſtomes be they old or new, are no other but the effects and iſſues of Trades, and commerce with forraign Nations, but all commerce and affairs with forrainers, all wars and peace, all acceptance and admitting for Currant forrain Coyn: all parties and Treaties whatſoever are made by the abſolute power of the King, and he who hath power of cauſes, hath power alſo of effects, no exportation or importation can be, but at the Kings Ports, they are the Gates of the King, and he hath abſolute power by them to include or exclude whom he ſhall pleaſe, and Ports to Merchants are their Harbours, and repoſe, and for their better ſecuritie he is compelled to provide Bulworks, and Fortreſſes, and to maintain, for the collection of his cuſtoms and duties, collectors, and cuſtomers, and for that charge it is reaſon, that he ſhould have this benefit: he is alſo to defend the Merchants from Pirats at Sea in their paſſage, alſo, by the power of the King they are to be relieved, if they are oppreſſed by forrain Princes, and his Treaty, and Embaſſage, and he be not remedied thereby, then lex Talionis ſhall be executed, goods for

Mich. 4. *Jac.* in the *Exchequer.*

Mich. 4. *Jac.* in the *Exche-quer.*

goods, and Tax for Tax, and if this will not redress the matter, then war is to be attempted, for the cause of Merchants: in all the Kings Courts, and of other Princes, the Judges in them are paid by the King, and maintained by him to do Justice to the subjects, and therefore he hath the profits of the said Courts: it is reasonable that the King should have as much power over forrainers, and their goods as upon his own subjects, and if the King cannot impose upon forrain Commodities a custome, as well as forrainers may upon their own Commodities, and upon the Commodities of this land when they come to them, then forrain States shall be inriched, and the King impoverished, and he shall not have equal profit with them, and yet it will not be denied, but his power herein is equal with other States, and so much for the person of Bates the subject: it is said, that an imposition may not be upon a subject without Parliament: that the King may impose upon a subject, I omit, for it is not here the question, if the King may impose upon the subject or his goods, but the impost here is not upon a subject, but here it is upon Bates, as upon a Merchant, who imports goods within this land, charged before by the King, and at the time when the impost was imposed upon them, they were the goods of the Venetians, and not the goods of a subject, nor within the land, but only upon those which shall be after imported, and so all the arguments which were made for the subject, fail; and where it is said, that he is a Merchant, and that he ought to have the Sea open and free for him, and that Trades of Merchants, and Merchandise is necessary to export before, the Surplus of our commodities, and then to import other necessaries, and so is favourably to be respected, as to that it is well known, that the end of every private Merchant is not the common good, but his particular profit, which is only the means, which induceth him to Trade and Traffick, and the impost to him is nothing, for he rateth his Merchandise according to that, the impost is imposed upon Currants, and he who will buy them, shall have them subject to that charge, and it is a great contempt to denie the payment, and so much for the person: I will give a brief answer, to all the Statutes alledged on the contrary part, with this exposition, that the subjects and Merchants are to be freed of Maletolt, and this was Toll unjustly exacted by London, Southampton, and other Ports within this Realm, but they are with this saving, that they pay the duties and customes, due, or which hereafter shall be due to the King, which is a full answer to all the Statutes; the commoditie of Currants, is no commoditie of this land, but forrain, and whereas it is said, that it is Victual and necessary food, it is no more necessary then Wine, and impost for that hath been always paid, without contradiction, and without doubt, there are many drinkers of Wine, who are also eaters of Currants, that which should be said Victual for the common-wealth is, that which ariseth from Agriculture, and of the earth within this land, and not nice and delicate things imported by Merchants, such as these Currants are, and are rather delicacy or Medicine then a Victual, and it is no reason that so many of our good and staple Commodities; should be exported to Venice, for such a slight delicacy, and that all the impost shall be paid to the Venetians for them, and the King should have none for their Commoditie, and although that the price be thereby raised, this hurteth not the Merchant, nor no other, but only a final number of delicate persons, and those also who are of most able and best estate, for their pleasure, but when the King is in want, he is to be relieved by a general imposition or subsidie upon all the subjects; the imposition which is here said, to be so great, and intollerable, is an evil president, for if he may do so much, he may do it in infinitum, and upon all other Merchandise: for the Imposition I say, that it is reasonable, for it is no more then foure times so much then was before, and that there hath been as much done in antient time in other Imposts, as in that of Wooll, which was at first but an Noble a sack, and is now at 50. s. the Impost of Wine was in antient time 3. s. 4. d. a Tun, and now is foure Marks, the lessening of custome and Impost is much to be guided, by intelligence

telligence from forrain Nations, for the usage and behaviour of a forrain Prince may impose a necessitie of raising customs of these Commodities, and so it was in the particular of Currants, the Duke of Venice Imposed upon them a ducket by the hundred, which by the wisdom of the state was foreseen to be a means, that in time will waste and consume the Treasure of the land, whereupon the Queen writ to the Duke, that he would abate his custome, which he refused, wherefore to prevent, that so great a quantitie of this Commoditie should not be imported into the land, the Queen granted to the company of Merchants of the Levant, that none should bring in Currants, but by their Licence, and those Merchants Imposed upon them who did Import, which were not of their company, if he were denizen 5. s. if he were a stranger 10. s. and this was paid by the Merchants without contradiction, but there was a clause in the Patent, that when the Duke of Venice abated his Impost, that the Patent should be void, and after the Duke was Solicited again, that he would abate the Impost, but he refused, and the first Commission was recalled, and after a new grant was made, which was executed all the Queens life time, which was as aforesaid; and whereas it is said, that if the King may Impose, he may Impose any quantitie what he pleases, true it is, that this is to be referred to the wisdom of the King, who guideth all under God, by his wisdom, and this is not to be disputed by a subject, and many things are left to his wisdome, for the ordering of his power, rather then his power shall be restrained, the King may pardon any fellon, but it may be objected, that if he pardon one fellon he may pardon all, to the damage of the Common-wealth, and yet none will doubt, but that is left to his wisdom, and as the King may grant a Protection for one year, so it may be said, that he may grant it for many years, which is a mischief, and so ought to grant none, which will not be denied but that he may, so it may be said, that the Queen may grant a safe conduct to a stranger, for if she may do that, then she may grant to all, which would be burthensome to the inhabitants, and yet it will not be denied; but that she may grant to any or all, as in her wisdome shall seem convenient, and the wisdom and providence of the King is not to be disputed by the subject, for by intendment they cannot be severed from her person, and to argue a posse ad actum to restrain the King and his power, because that by his power, he may do ill, is no argument for a subject, to prove the power of the King by presidents of antiquitie in a case of this nature may easily be done, and if it were lawful in antient time, it is lawful now; for the authoritie of the King is not diminished, and the Crown hath the same Attributes, that then it had, and in antient time such Imposts were never denied, and that which is given by Parliament is not an Impost but a subsidie: in antient time small Traffick or intercourse was betwixt the inhabitants of this land and forrain Nations, so that the principal custom was of the Commodities of this land, which were Woolfels and Leather, and that the custom for Wools was an Noble for a Sack, was an imposition, as it appears by the Statute of the 14. of Ed. 3. cap. 21. it is objected, that Merchants cannot be restrained, but only persons suspected, as the writ of ne exeat Regnum is, but as it is said in Dyer, before cited, it is without doubt, that the cause is not Traversable, and that the King may inhibit any man, for if it be not Traversable, it is not material, and the reason wherefore any man may be restrained, is for defence of the Realm, and it may be done by privie Seal, privie signet, great Seal, or Proclamation, and that appears by the writ of licentia Transportandi in the Register which containeth licence for one to Travail, and limits him to what place he shall go, and when he shall return, and with what goods; that the King may prohibit body and goods, and when a man is beyond the Seas, the King may command him to return, and if he doth not obey such command, he shall forfeit his goods: now for restraint of Commodities many presidents are to prove it in the time of H. 3. and E. 1. it was forbidden, that no Wooll should be Transported into Flanders, and H. 7. a Commission was awarded to inquire, who had done a-

Mich. 4. Jac. in the Exchequer.

gainst

Mich. 4. *Jac.* in the *Exchequer*.

gainſt this ordinance, and the goods of one Freeſton were ſeiſed, therefore, an Attachment awarded againſt the Ships of Hull, for Tranſporting contrary to the ordinance, in the 22. E. 1. there it was forbidden, that no Merchant ſhould Trade with France, for, Trade with forraners is a forrain thing which is only referred to the King: in the 17. H. 6. all Merchants were forbidden to import wares from Flanders into this land, and the Cittizens of London complained of certain Merchants, which had done contrary to this ordinance to the Lords of the Privie Councel, which I have here ready; for the Record mentions it, and the Kings Attorney was commanded to exhibit an information againſt the Merchants, which he did, and they pleaded that the Proclamation was made, here upon Eaſter Eve, and that they were then at Bruges, and upon the Wedneſday after Bruges Market they bought the wares before notice of the Proclamation, and before it were poſſible, that they could have notice of it, and pray judgement &c. and ſo much for reſtraint of the perſon and goods, by the Statute of 31. E. 3. Cap. 8. times were appointed in which Wools ſhould be Tranſported, and alſo Cap. 9. Authoritie was given to the Chancellor and Treaſurer, to defer the paſſage at their pleaſure, but that this was the Common Law, and that the King by his ſupream Authoritie might do it, it ſeems to me it is apparant by the Statute of the 26. H. 8. Cap. 10. which gives power to the King by his letters Patents, to limit the time for importing of Wines againſt the Statute of 23. H. 8. Cap. 7. which was no more but a reſtoring of his power abridged before, and ſo was the Statute of 31. E. 3. for otherwiſe the Parliament would never have given him Authoritie to contradict an Act of Parliament by his letters Patents, or to revive theſe Acts: Impoſitions are meerly a new cuſtome, and ſo are they ſtiled in the Margent of the Roll of the 3. E. 1. in this Court, where it is Recorded, that the King had aſſigned Merchants to receive (uſing the ſame words which are uſed here) half a Mark for every Sack of Wool, and a Mark of every Laſt of Leather, and that if the Merchant who is ſo appointed Tranſport any after, that it ſhall be forfeited, and out of this record I obſerve, that three hundred Pelts make a Sack of Wooll: from the 21. Ed. 1. unto the 28. E. 1. the cuſtoms for Wools was 40. s. a Sack, and in 25. E. 1. the Impoſition of Maletolt was repealed by Act of Parliament, which Maletolt was an increaſe of Impoſt upon ſtaple commodities, and therfore was given to the King a great ſubſidie with this cauſe, that it ſhould never be drawn into preſident, which ſhews, that this Maletolt was rightly impoſed, otherwiſe the Parliament would never have given him ſo great a Recompence for the Abrogation of it: but after in the 13. of E. 3. becauſe it was a thing of ſo great conſequence to the Crown. it was revived and made 40. s. for Wool, and Woolfels, and 3. l. for Leather for denizens, and double for ſtrangers: in the 14. Ed. 3. a Petition in Parliament to abate it, and for a great ſubſidie it was releaſed, and in the 18. of Ed. 3. it was again revived, and a new petition was made in Parliament, and this petition was continued until the 36. of Ed. 3. and then it was abated, and alſo by the 45. E. 3. it was again abated, ſo that it ſeem, that between theſe times it was revived, but after it did not continue long, for in 48. E. 3. it was again revived, and for Wool the Impoſt was 50. s. et ſic de ſingulis, and in 1. R. 2. after it was anſwered to the King, as it appears in the accompts here, and in 5. R. 2. it was again ſuppreſſed by Parliament for a ſubſidie granted to the King with a ſaving of antient rights: all theſe Statutes prove expreſly, that the King had power to increaſe the Impoſt, and that upon commodities of the land, and that he continually uſed this power notwithſtanding all Acts of Parliament againſt it, and ſo much for commodities of this land: but for forrain commodities it appears by no Act of Parliament, or other preſident that never any petition or ſuit was made to abate the Impoſt of forrain commodities, but of them the Impoſt was paid without denial; as for example, for Wines in the 16. E. 1. as appears in this Court upon Record, it was commanded to the Bailiff of Dover to levie and Collect of every Tun of Wine of a ſtranger 4. s. and

in

in the 22. E. 1. 2. 8. thereof was releaſed, at the ſuit of the French Ambaſſador, in the 26. of E. 3. the King granted priviledges to Merchants ſtrangers, but there was given for it an increaſe of cuſtome, and this was anſwered as it appears upon accompt in the times of E. 1. and E. 2. the caſe of Allom was as it hath been recited by my brother Clark: it is objected, that the Merchant ought to have free paſſage upon the Sea, but that doth not conclude the King, but that he ſhall have his Impoſt if he cometh into his Ports, and here the queſtion is for Merchandiſe after that they are brought into the Port, but it is ſaid, that they cannot come into the Port but by the Sea, that is true, but if this reaſon ſhould hold then the King could not grant Murage, Pontage, and the like, becauſe the common Channel to them is free, and Average is for ſecuritie aſwel as Ports: another objection, that the Defendant here is not reſtrained, but that is anſwered, for if a pain be inflicted upon them who import, this is an inhibition upon a pain to all; another objection was, that there was no conſideration of the Impoſition, and if it be demanded what differences between the caſes; I anſwer as much as is between the King, and a ſubject, and it is not reaſonable that the King ſhould expreſs the cauſe and conſideration of his Actions, for they are arcana Regis, and no ſatisfaction needeth, for if the profits to the Merchant faileth he will not trade, and it is for the benefit of every ſubject, that the Kings Treaſure ſhould be increaſed: an objection was made againſt the form of proceeding, becauſe it was by the great Seal to the Treaſurer, and that he by the cuſtomers, Peteret et recipieret, and this could not be better, as it was anſwered before: it was objected that it ſhould be by Proclamation, and that needs not, for it toucheth not all the ſubjects, but only thoſe who are Traders in Merchandiſing, the beſt and aptest means to give them notice by the cuſtomers, and it is alledged by the information expreſly, that he had notice. It was laſtly objected, that there ought to be a quod damnum in the caſe before the grant, that is not ſo, for that ſhall be only when the King granteth any thing which appertaineth to his prerogative, and not when he maketh Charters, to his ſervants to levy his duties due to his Crown, wherefore I think that the King ought to have judgement, which was after given accordingly. Mich. 4. *Jac.* in the *Exchequer.*

An Information againſt Sir *Edward* Dimock.

The Biſhop of Carliſle called John May in A. 26. Eliz. made a leaſe in reverſion to Queen Eliz. of the Manner of Horncaſtle, whereof the Biſhop was ſeiſed in right of his Biſhoprick, and this was for 4. years, and it was acknowledged before Commiſſioners appointed for this purpoſe, and the Biſhop prayed it to be inrolled, and this prayer is indorſed but not inrolled, and in 37. Eliz. this leaſe was confirmed by the Dean and Chapter in the life of the leſſor, and in 44. Eliz. the ſucceſſor Biſhop leaſed this land to Sir Edward Dimock, the Statute of the 43. of Eliz. hath a proviſo, that it ſhall not extend to any leaſe before made by the Biſhop of Carliſle to Queen Eliz. then not inrolled, and after the death of the Queen, viz. 5. Jac. this leaſe in 26. Eliz. is returned, and certified to be acknowledged, and is then alſo inrolled, and Sir Edward Dimock had entred, and was in poſſeſſion by vertue of his leaſe, in the 3. Jac. and the information was for entrie and intruſion in 3. Jac. and upon the Bar all this matter was diſcovered, and a demurrer joyned George Crook for the King, conceived that the leaſe made in the 26. Eliz. is good, firſt he ſaid, that although the Queen cannot take an inheritance or freehold without matter of Record, yet ſhe may take Chattels upon a ſurmiſe made, that they were granted unto her, and therefore he vouched 21. H. 7. fo. 19 that an Obligation may be granted to the King without inrolment of the grant, and 40. Aſſiſe pl. 35. Brook tit. ſuggeſtion pl. 5. it appears that

6. Jac. in the Exchequer.

that the King ſhall have a Chattel by a demiſe by parol upon a ſuggeſtion made thereof in the Exchequer, without a Record, and in the 15. H. 7. fo. 15. the Kings Baylie who is not of Record, may be compelled to accompt upon a ſuggeſtion made, Brooks ſuggeſtion pla. 31. and in the 37. H. 6. fo. 7. & 18. if the King gives goods with his hands, this is good, although no record be made thereof, becauſe it is but a Chattel, and by the ſame reaſon he inferred, that he may alſo accept of Chattel without a Record: but admitting that he cannot take without a Record, it ſeemeth that here is a thing well enough Recorded, to intitle the King after the return made by the Commiſſioners, for the Commiſſioners are officers of Record to this purpoſe, and they endorſe the prayer of the partie to have it Recorded, and this being after the return is a ſufficient Record to intitle the King, and he vouched the 2. H. 7. fo. 10. where the ſervant of Juſtice Catesby after the death of the Judge made a return, and this was good, and the 8. H. 4. a Record certified by a Judge after he was diſplaced, and 43. Aſſiſes if a Coroner makes his Rols and dies before he certifie them, they may be certified after his death, and ſo here, this acknowledgement and prayer being certified may at any time after be inrolled, and although it ſeemeth by the Book in the 19. Eliz. Dyer fo. 355. that a grant being made to the King and acknowledged before one of the Maſters of the Chancery, and inrolled in the time of another King maketh not the Grant good, yet he ſaid, that it was adjudged for another grant made to the King by the Duke of Somerſet, and acknowledged before one of the Maſters of Chancery, and inrolled in the time of another King was good enough to perfect the grant, and this was by a grant made by the Duke of Bozoms Inne in London, and he ſaid, that it is not reaſonable, that the Law ſhould adjudge otherwiſe, for it may be, that the Clark will not inroll it untill ſuch a time, viz. a moneth, within which time the King may die, ſhould it now be reaſonable, that it ſhould not be inrolled at all, he ſaid it was unreaſonable, and he ſaid, that it appeareth by the 37. H. 6. fo. 10. that a deed delivered at the Kings Coffers is good enough to avoid his leaſe made in the 44. Eliz. for although that it be true that a grant of a reverſion ſhall never operate to the deſtruction of a right of a third perſon, yet it ſeemeth that an Act commenced, may be confirmed well enough to the deſtruction of a mean interpoſed Act, and it ſeemeth that the inrolment here, is but a confirmation of a precedent leaſe, and not a relation to make a thing which was not before, and therefore to examine what thing an inrolment is, and it ſeemed to him that it is no matter of Record, as it appears 24. E. 3. and 29. H. 8. fo. 15. and therefore it appears by Wymacks Caſe Cook L. 5. that a deed inrolled ought to be pleaded, hic in Curia Prolat. which proveth, that the deed, and not the inrolment thereof is the thing which paſſeth the eſtate, and therefore he vouched the caſe in the 6. E. 6. Brook title faits, if one joynt Tenant ſells all his land in D. and after his companion dieth, and then the deed is inrolled, yet a moitie only ſhall paſs: and 41. Eliz. Cook Perimans Caſe lib. 5. if a man make a feoffment of lands, and inroll the Deed within the Mannor, as by the cuſtome it ought to be, yet the inrolment ſhall paſs nothing, and therefore it is there ſaid, the inrolment may be good enough after the death of the parties, ſo by the ſame reaſon aforeſaid, it is put in the ſame Caſe of Perimon, and alſo in Butlers and Bakers Caſe Cook lib. 3. that if a man deliver a writing as an eſcrow, to be his Deed upon certain conditions performed, and after the Obligor, and the Obligee die, and then the Conditions are performed, the Deed is good, for there was traditio inchoata in the life of the parties, and this being after conſummated, takes his effect by force of the firſt delivery and acknowledgement, and therefore alſo he ſaid, that it was lately adjudged, that if two men are mentioned to be bound by one Obligation, and the one ſeals at one day, and the other at another day, this is as good, as if it had been at one day, and therefore he ſaid, that there is no doubt but if a leaſe be made to the King by a Biſhop, and after another leaſe is made alſo of the ſame land, or if the Biſhop die, yet if after the firſt leaſe be inrolled, this

is

is good, and therefore alſo he cited a caſe to be adjudged in Banco Regis 41. Eliz. between Collins and Harding, that if a man be ſeiſed of freehold, and Coppihold land, and makes a leaſe of both for years with licence rendring rent, and after he grants the reverſion of the freehold, and makes a ſurrender of the Coppihold, to the uſe of the ſame perſon, and an attornment is had for the freehold, and the preſentment of the ſurrender for the Coppihold, is not made untill a year after, yet he in reverſion ſhall have an action of debt for all the rent, for the preſentment of the ſurrender is but a perfection of the ſurrender before made, alſo he cited the caſe as I obſerved him to this effect, in the 9th. of Eliz. in the Abbot of Colcheſters Caſe, where he ſaid, that the Abbot of Colcheſter committed treaſon, and after made a leaſe for years, and then he ſurrendred to the King all his lands, and after an office found the treaſon, and it was holden the leaſe is good againſt the King, who took by the ſurrender, and not by the treaſon committed before, but as Walter ſaid, the caſe was adjudged, that the King ſhould avoid the leaſe, for now he is in by the treaſon paramount the ſurrender. *6. Jac.* in the *Exchequer.*

Phillips againſt *Evans*.

IN an Ejectione firmæ brought up three acres in the forreſt of Kevington in the Countie &c. the Defendant pleaded not guiltie, and the Venire facias was awarded de vicineto of the forreſt, and the Defendant moved in arreſt of judgement, becauſe the Venire facias de vicineto of the forreſt was not good, for as Stephens, for the Defendant ſaid, that a forreſt and the name thereof, is but a place priviledged for Veniſon, and not a place certain from whence a Venue may come, and it was ſaid, that in the 16. Eliz. in Banco Regis in the Lord Padgets Caſe a Treſpaſs was brought of 3. Acres of land in Beer-wood, and the venire facias was awarded de vicineto, de Beer-wood, and the chief Baron Tanfield ſaid, that in this caſe the venire facias was not well awarded; and ſo it was holden in the Kings Bench, and therefore he would be adviſed in this Caſe; and after at another day it was moved, and then the chief Baron ſaid, that he had peruſed the Books touching the Caſe in queſtion, and that it appears by the 47. E. 3 fo. 6. by Fuchden, that a forreſt is many times out of any Pariſh, and therefore ſhall not be intended to be within any Pariſh, and he ſaid, that the Defendant in this caſe ought to have pleaded, that the forreſt was within ſuch a Pariſh, and demanded judgement, if he ſhall be anſwered without alledging it to be within a Pariſh, and that otherwiſe judgement ought to be given for the Plantiff, and ſo he ſaid, that it was now lately adjudged in the Kings Bench, where a man was indicted for Hunting in a forreſt, and a venire facias was awarded de Foreſta and good, and he vouched alſo the 8th. of H. 8. in Savages Caſe, and the 7. of E. 3. and Baron Altham Accorded; and he vouched alſo the Book of the 18. of E. 3. fo. 36. where it is ſaid expreſly, that it ſhall not be intended to be within a Pariſh, except it be ſhewed in the pleading on the other ſide, and he vouched alſo 27. H. 8. fo. 12. and then all the Barons agreed, that judgement ſhall be given for the Plantiff.

Airie and *Alcock*.

THe Caſe was argued again, between Airie and Alcock concerning the miſnaming of Corporations, which was argued before, as appeareth fo. and Thomas Stephens the Princes Attorney argued, that the leaſe is void by the reaſon of the miſnomer, and he obſerved the Miſnomer to be principally in theſe two material things. Firſt, where the foundation was, by the name of the Hall, or the College of the Queen &c. the preſentation of the Parſon, and alſo the confirmation of the leaſe made by the name of the Queens College &c. omitting the word (Scholers) which ſhould immediately precede the word Aulæ Reginæ which he held a material variance; the ſecond variance he obſerved to be thus, that

6. Jac. in the *Exchequer.*

where the foundation was by the name of the Hall or Colledge of the Queen in Oxford, the preſentation and confirmation of the leaſe was, by the name of Provoſt of Queens Colledge in the Univerſitie of Oxford, ſo that the word Univerſitie was added, which was not in the foundation, and to prove that theſe variances were material for the avoiding of leaſes, he cited the caſe often remembred, in the argument before, which concerned Merton Colledge in Oxford; and the parties to this caſe, were Fiſh and Boys, which was in Trin. 30. Eliz. Banco R. Rot. 953. wherein the caſe was, that the ſaid Colledge was incorporated by the name of Warden and Scolers of the houſe or Colledge of Scholers of Merton in the Univerſitie of Oxford, and that they made a leaſe by the name of the Warden, and Scholers of the houſe or Colledge of Merton Colledge in Oxford, ſo that the word Scholers, which did immediately preceed the word Merton in the foundation is omitted in the leaſe as in the principal Caſe: alſo where the word Univerſitie was added in their Corporation the ſame was omitted in the leaſe, whereas on the other ſide, this was not mentioned in Airies Caſe to be contained in the foundation, but added in the leaſe, and he ſaid, that for theſe variances in Merton Colledge Caſe, the leaſe was holden to be void, which he held to be all one with our caſe; but he agreed, that in divers caſes variances in addition of ſurpluage ſhall not be hurtful in a leaſe, as appears by 21. and 22. E. 4. and therefore though in the principal Caſe, the word fellows was added in the leaſe, which was not in the foundation he would not argue, that this ſhould be any variance to hurt the leaſe; Hern Baron ſeemed, that the verdict is not ſufficient to move him to give judgement for the Plaintiff; for he ſaid, although it be admitted, that the leaſe by reaſon of the variance is not good, yet the verdict doth not ſufficiently finde that Doctor Airie is a perſon, who may take advantage of the invalidite thereof, for it appeared not, of whoſe preſentation Doctor Airie came, to have the Parſonage, for although that it ſhould be admitted, as it is ſaid in Heckers Caſe 14. H. 8. that here might be Parſon of his own preſentment, yet it is not found that he did ſo here, and he ſaid that in every quare Impedit it ought to be expreſſed, what perſon made the preſentation; to the variance he thought the leaſe to be good, notwithſtanding that, for he ſaid, that the word (Scholers) is not added in the foundation as a part of the name of a Corporation, but only to expreſs what kinde of Colledge this ſhould be, viz. to diſtinguiſh it from a Merchants Hall or Colledge, and therefore though the word Scholers be put in, yet we properly call it the Queens Colledge, and not the Queen Scholers Colledge, for it is not of neceſſitie that the Scholers of the ſaid Colledge, ſhould be the Queens Scholers, but that they are Scholers of the Queens Colledge, and he vouched 2. H. 7. Fitz. Titles Grants, and as to the caſe of Merton Colledge cited by Stephens he ſaid, that in that Caſe, there was a main imperfection in the verdict, which as he thought might move the ſaid judgement to be given as it was, and not the matter in Law, for they did not finde, that the leſſor was warden of the Colledge at the time of the leaſe made; alſo he vouched Cook lib. 6. Sir Moil Finches Caſe, and he vouched Sir Peter Seawels Caſe, where in a leaſe made by a Corporation, that theſe words ex fundatione Regis E. 6. which were part of their foundation were omitted, and yet the leaſe good, and he cited alſo the caſe of the Biſhop of Peter Bourough, where the Corporation was by the name of Epiſcopi de Burgo Sancti Petri, and a leaſe was made by the name of the Biſhop of Peter Bourough, and the leaſe good, and that no difference in ſubſtance, and if a Corporation were made by the name of Scholers and fellows, and in a leaſe the word fellows is omitted, yet it is good; and therefore in the principal Caſe, it ſeemeth, that the omiſſion of the word fellows is not material: alſo he ſaid, that the addition of the word Univerſitie, which is no part of the Corporation, is not fatal to the leaſe, for in the Lord Norths Caſe 36. & 37. Eliz. the addition of the word Univerſitie, or the omiſſion thereof, was holden of no force to avoid the leaſe. Altham Baron Contra for the matter in Law: but for

the

the inſufficiency of the verdict he thought, that there ought to be a new venire facias, for no judgement may be given for any partie; for the inſufficiency of the verdict, for it is not found, that Doctor Airie was preſented. And therefore he cannot have an action, for it cannot be intended, that his preſentation was by a better name then the other preſentation was, and he cited the 11. H. 7. fo. 8. and 17. E. 3 title quare impedit, he who will avoid a preſentation, ought to intitle himſelf. Secondly, it is not found here that the Church is void ſufficiently, he ſaid, that if a Provoſt preſent himſelf, this is void meerly, and he cited Heckers Caſe, it is not found here that Doctor Airie entred poſt inductionem, for it is ſaid, that he entred ante prædictum tempus quo &c. but not that he entred after induction, and therefore it may be he entred before, and then it is not good: but for the matter of Miſnoſmer it ſeemeth, that this avoids the leaſe contrary to Baron Herns opinion, wherefore the chief Baron Tanfield adviſed the parties to agree, to have the true caſe rightfully found by a new ſpecial verdict, for he ſaid to Doctor Airie, that no judgement can be given for him, what opinion ſoever himſelf, and Baron Snig ſhould hold, the which they would not deliver, for Snig Baron ſaid, that by 40. Aſſiſe that if a man be indebted to the King, and deviſeth all his goods to A. and the Executor aſſenteth, and after this debt is demanded, the Legatee in this Caſe ſhall be charged for this debt, and ſo was it ordered by him and Tanfield as reaſonable and equal: but Hern and Altham contrary, for it was the folly of the Executor to aſſent to the Legacie, and they ſaid, that it was ſo adjudged, and reſolved in Sir William Fitzwilliams Caſe in the Exchequer Chamber by an Engliſh Bill. *6. Jac.* in the *Exchequer.*

Upon a motion made by Walter, it was ſhewed by him out of a Record in the Tower, that in the 31. E. 1. a Statute was made to diſcharge Merchants ſtrangers from the payment of Priſage of Wine, and allowed by the Court, that no Merchant ſhall be chargable for the priſage of Wines: ſee more of this Caſe in the Tit. of Doublin in Ireland.

An Information againſt Sir *Edward Dimock*.

The Caſe of the Information againſt Sir Edward Dimock, which was the laſt Term, was now argued again by Thomas Crew for the King; but his argument I have not written. Walter for the Defendant ſaid, that the Commiſſion for taking of the acknowledgement of the leaſe, was not returned in the life of the Queen, nor the caſe was not put in this caſe in the Queens life time, as it was in divers of the cales cited of the other ſide, and therefore it differs from them: in this caſe he obſerved foure points. Firſt, if this leaſe ſhould be good, if it were never inrolled. Secondly, admitting that it cannot, if here be ſuch an inrolment as is requiſite. Thirdly, admitting that the leaſe is good without inrolment, or with this inrolment, then if this can avoid the leaſe made in the Interim. Fourthly, if no leaſe be good until inrolment, then if the confirmation being made before the inrolment can be a good confirmation. And as to the firſt, he conceived, that the Caſes put of perſonal Chattels, veſted in the King without Record are good Law: but here it is of a real Chattel, and he ſaid, that there are three reaſons to prove, that perſonal Chattels are in the King without Record. Firſt, they are in judgement of Law trivial. Secondly, they are periſhing, and of no continuance. Thirdly, the Records would be infinite, if they ſhould be of Record, but there are no ſuch reaſons to prove, that real Chattels ſhould not be of Record, for in the judgement of Law, they are of greater value, and are alſo more permanent, and therefore Thrope ſaith in the 18. E. 3. that it had been adjudged, that Livery ought to be made upon a leaſe for 100. years, alſo leſſee for years ſhall have aid; but leſſee at will ſhall not, alſo it appears by Cook lib. 4. in Sir Andrew Corbets Caſe, that a Gardian ſhall not avoid a leaſe for years: alſo the Statutes regard leaſes for years, and it was holden in Gravenors Caſe, in the 23. Eliz. in the Court of Wards, that a woman ſhall forfeit her jointure, for making of a leaſe for 40. years by acceptance of a fine, and reſervation of a rent: alſo leſſee for years

6. Jac. in the *Exchequer.*

may falſifie a recovery: alſo it is agreed of the other part, that the King cannot take an uſe without Record, and 6. *E.* 6. Dyer Bourchers Caſe, the King cannot take an uſe without record: alſo he ſaid, that in every caſe, where a Deed or Record is requiſite for a freehold, the ſame conveyance is alſo requiſite for a leaſe for years: and therefore if a freehold be conveyed to a body politick, it ought to be by Deed, the ſame Law if a leaſe for years be conveyed to them, and ſo if a leaſe for years be made, of a hundred or rent; this ought to be by Deed, by 15. H. 6. fo. 38. alſo in Bayes and Norwoods Caſe 41. Eliz. it was adjudged, that a leaſe for years cannot be made to a corporation without Deed, 2. E. 6. Brook Tit. Recognizance 19. a man cannot make a ſurrender to the King without Record: the ſecond point he ſaid, that the inrolment being made after the death of the Biſhop, Leſſor, or of the Queen Leſſee, is no ſufficient matter of record; for in judgement of Law nothing ſhall paſs out of the Leſſor until the inrolment, and therefore the inrolment is the thing which maketh the eſtate, and not only which perfecteth it, and in all caſes, as appears in Say and Fullers Caſe, the thing which maketh the eſtate or which perfecteth it, ought to be in the life of the Leſſor, and therefore if a reverſion be granted, attornament ought to be made in the life of the grantor, 40. Aſſiſes pla. 19. & 16. Aſſiſes pla. 15. and Cook lib. 2. in Tookers Caſe, and to prove further, that the thing which ought to perfect the eſtate, ought to be in the life of the grantor, or feoffor, he vouched 31. E. 3. tit. abbe 10. and 41. E. 3. and temps H. 8. tit. feofments, if a feoffee enter not by force of a livery within the View, this is not good, and if a Biſhop make a leaſe, and the Chapter do not confirm it until after his death, it is not good, by 31. E. 3. tit. Abbe 10. alſo here to prove, that in reſpect of the Queen Leſſee died before inrolment, that the leaſe is not good, for this purpoſe he vouched 24. E. 3. and the 11. E. 4. and the 7. H. 4. and 21. E. 4. that Chattels granted to the King ſhall go to the ſucceſſor, and not to the Executor; and becauſe nothing veſted in the Queen, nothing can veſt in the King as ſucceſſor, for a thing cannot be veſted in one as heir or ſucceſſor, which was never veſted in the Anceſtor, and he vouched Bullocks caſe in 10. Eliz. Dyer & 21. Ed. 4. of election: alſo it cannot veſt in the King Primarily, becauſe he was never partie to the Indenture of leaſe, and he cited a caſe to be adjudged accordingly, betwixt Founds and——29. Eliz. & 11. H. 7. that he who is not partie to the Indenture, ſhall not be primarily bound, nor ſhall primarily take by the ſame Indenture, and it is inconvenient, that this ſhould be a good inrolment, and where it was ſaid of the other part, that a bargain and ſale is good enough, although it be not inrolled in the life of the parties, ſo that it be inrolled within 6. moneths, to that he well agreed, for by the bargain and ſale an uſe paſſeth at the Common Law without help of the Statute, and this without inrolment, and the Statute of inrolments reſtraineth it not, but that it may paſs well enough at this day, and ſo the Statute perfects it, ſo that it be within 6. moneths indifferently, and therefore it is good, notwithſtanding the death of the parties, and he concluded with the Book of the 19. Eliz. Dyer fol.——and whereas it was ſaid to be reſolved contrary in an authoritie not printed, he ſaid that he believed the printed Book, and vouched alſo the caſe cited before, in Butlers and Bakers Caſe, Cook lib. 3. to the third point it ſeemed to him, that although the inrolment be good; yet that ſhould not avoid the eſtate by relation, for a relation is not good to avoid mean conveyances, without an antient right, as if the Kings Aſſignes purchaſe lands, the King now hath right, and therefore an office found after, ſhall relate to avoid all mean conveyances, and he ſaid, that relations are not ſo certain, wherefore a man may make a ground, for every caſe hath his particular reaſon, and therefore to ſome purpoſes, an attornament ought to relate; but to other purpoſes it ought not to relate, and therefore an attornament cannot relate, to intitle a grantee to rents due between the grant and the attornament, and ſo in this caſe, if the inrolment had been in the life of the Biſhop and of the Queen, yet it could not have given to her the mean

profits

profits between the grant and the inrolment, and he vouched a caſe in Butlers and Bakers caſe, and the 11. H. 7. that a relation ſhall never be prejudicial to a ſtranger for his eſtate lawfully executed, and therefore if a feofment be made to a husband and wife, and to a third perſon, and after the husband and wife are divorced for a precontract, yet they ſhall take but a Moitie, as if they were married, alſo it is a rule, that an eſtate veſted cannot be made Tortious by relation: ſee Butlers and *B*akers Caſe; and he vouched a caſe to be adjudged, betwixt Windgate and Hall in the Kings Bench Mich. 31. & 32. Eliz. that if a Statute be acknowledged to a Common perſon, and another Statute to the King by the ſame Conuſor, and after the Statute acknowledged to the common perſon is extended, and the Conuſee in poſſeſſion, and alſo the King ſues execution of his Statute, he ſhall not avoid the eſtate lawfully executed in the firſt Conuſee, as it was there holden, but the Barons ſaid, una voce, that if ſuch a caſe ſhould come in queſtion before them, they would hold the contrary for the King; and for the fourth point, viz. if the confirmation were good, being made before inrolment of the leaſe, and ſo upon the matter before any leaſe in being, to which the Counſel of the one part nor of the other were provided to ſpeak. Walter ſaid, that the confirmation was not good, for Littleton ſaith, that a thing or eſtate which is not in being cannot be confirmed; and Tanfield chief Baron ſaid, and others alſo, that this was the principal point of the caſe, and the great doubt is of the other part, viz. that this is not good, and therefore adviſed them to argue it at another day, and Walter ſaid, that the confirmation is not good, in regard it is not of record nor inrolled, and he vouched the 26. of E. 3. fo. 20. that the King cannot take notice of any thing without record; the next Term upon the firſt Tueſday it was appointed to be argued again: and Doddridge the Kings Serjeant obſerved foure points. Firſt, if any inrolment be neceſſary in the caſe. Secondly, admitting that the inrolment be requiſite, if here be a good inrolment, being made after the Kings death. Thirdly, if the confirmation of the Dean and Chapter be of neceſſitie to be inrolled. Fourthly, admit that the confirmation need not to be inrolled, and that the leaſe ought to be inrolled, then if this confirmation be good, becauſe it was before the inrolment of the leaſe: as to the firſt he conceived, that aſwel a Chattel real as a thing perſonal may veſt in the King without Record, for it ſhould be inconvenient, that Chattels ſhould be inrolled. Firſt, for the infinitneſs. Secondly, for the ſmall value of them in the judgement of Law, and he vouched 40. Aſſiſes pla. 35. of a Legacy deviſed to the King, and 37. H. 6. fo. 10. if a Chattel be given to the King, there needeth no record, and the 28. E. 3. fo. 23. the King brings a quare impedit upon a grant of the next preſentation without record, and yet it was good 21. H. 7. fo. 19. an obligation may be granted to the King without record 35. H. 8. Brook prerogative, and 33. H. 6. the Baily ſhall have aid of the King, and he vouched alſo 2. E. 6. Brook prerogative, and 35. H. 6. fo. 3. Fitz. villinage, and Brook prerogative, and the 21. H. 7. fo. 8. if a man poſſeſt of a Term be outlawed, this Term is in the King by outlawry without Record: to the ſecond point, he thought that the inrolment was good after the Queens death, for the inrolment ought to relate, as it appears by 1. H. 7. fo. 28. and this relation diſaffirmeth the mean eſtate, and gives alſo the mean profits, and as to the point of relation, he vouched Nichols *C*aſe, Plowden where the entrie of the heir once lawful was made unlawful by relation, and he vouched alſo 14. H. 8. fo. 18. in the end of Wheelers Caſe, and by the 4. H. 7. fo. 10. a man ſeiſed of land is attainted of Treaſon, the King grants this land to A. the perſon attainted commits a Treſpaſs, and is reſtored by Parliament, the Patentee ſhall never have an action of Treſpaſs, becauſe this reſtitution takes away the cauſe of action, and to prove that the inrolment may be well enough after the Queens death, he ſaid, that the ſaid caſe put to be reſolved in the 19th. of Eliz. Dyer fo. 355. concerning the Duke of Somerſet, was after adjudged contrary to the ſaid reſolution, and he ſaid, that the caſe concerning parcel of the land contained in

6. Jac. in the *Exchequer.*

S. the

Hill. 6. *Jac.* in the *Exchequer.*

S. the Deed come in question in Parliament, in the 43. Eliz. and it was then commanded, that the Deed should be inrolled, and also he compared it to a case put in Shelleys Case, that the heir shall have land as by discent from his father, although that the conveyance be not inrolled in the life of the father: also he said, that the Queen dieth not as to her body politick: to the third point he said, that the confirmation need not to be inrolled, for it passeth nothing and is but a bare assent, and therefore differeth from the case of Patron and Ordinary, and of a disseisee, for the disseisee hath right to grant, and the Patron and Ordinary have interest in R. but Bishops are seised in their own right, and therefore their lease wants the approbation only of the Dean and Chapter, and he vouched Cook. lib. 3. the Dean and Chapter of Norwiches Case, and the writ of Sine Assensu Capituli in the Register proveth it, for the tit. confirmation pl. 30. observes, and Littleton in the end of his chap. of discontinuance saith, that a parson may charge the Gleab by the assent of the Patron and Ordinary, and the opinion of Brook in the case of the 33. of H. 8. tit. confirmation pl. 30. agreeth to this opinion, and so are some opinions in the 7. H. 4. fo. 15. & 16. and he said, that this point was adjudged accordingly in the first of Ma. but he had not the record thereof; and therefore he would not insist upon it, and he vouched 1. and 2. of Ma. Dyer fo. 106. and Cook lib 6. fo. 15. Hodges Case, that the acceptance of the Patron is good enough to make a confirmation; to the fourth point he said, that the confirmation was good, notwithstanding it be before the inrolment of the lease, for the lease shall stay his operation, until all the Ceremonies be used for the perfection of the estate, and he vouched Littleton fo. 122. and 6. E. 6. Dyer fo. 69. where a parson made a lease to commence after his death, the Patron and Ordinary in the life of the parson confirmed it, and this is good, and he vouched also, Anne Maiowes Case Cook lib. 1. where the father confirmed the sons grant when he had but a possibilitie, and yet good, and he vouched Dyer 2. & 3. Eliz. fo. 194. where a grant was incertain, and the inception was before, the confirmation after makes it good, and therefore he said, if disseisor and disseisee bargain land, although it be but a confirmation of the disseisee, which may be well enough without inrolment of the Deed by a bare delivery, yet this shall hinder the operation until the inrolment of the Deed, which should pass the estate from the disseisor, and by Cook lib. 5. Fitz. Case it appeareth, that one part of the assurance shall stay his operation until another part hath his perfection; and therefore he concluded, that here the confirmation in judgement of Law, should stay his operation until the lease be inrolled which passed the estate: see the argument of Serjeant Nichols to the contrary, and also the argument of Thomas Crew in Easter Term and Trin. 7. Jac.

Catesbies Case Pasch. 7. *Jac.* in the *Exchequer.*

TAnfield chief Baron said, that in the year 31. Eliz it was adjudged in Goar and Peers Case, if Tenant for life infeoffe A. and his heirs to the use of the feoffee and his heirs during the life of the feoffor, that this is a forfeiture, because these words during the life of the feoffor shall be but to the use limited, and he put the case which Serjeant Nichols put at the Bar of the Lady Catesby, which was, that a man suffered a recovery to the use of William Catesby and Anne his wife, and of the longer liver of them, and of the Executors of William for forty years, if one Elizabeth Catesby should so long live, William Catesby dies, and the reversion came to the King by forfeiture, and he pretended, that Elizabeth Catesby being dead the estate is also determined, in regard that these words, if Elizabeth shall so long live, refer to all the estate; but Curia avisari vult.

It

It was ſaid by the chief Baron, that if a man plead a deed in writing, and the other partie do not pray Oyer, the ſame Term he ſhall not have Oyer in another Term in the Common Pleas, but in the Kings Bench Oyer ſhall be granted in another Term. Paſch. 7. *Jac.* in the *Exchequer.*

It was found by office that Elizabeth Bowes was convicted of Recuſancy in 35. Eliz. and that a leaſe for years was made unto her in the year 36. Eliz. in truſt, and that ſhe had conveyed this leaſe over according to the truſt, and a queſtion was demanded, if the King ſhall have this term or not for her Recuſancy, and it ſeemed that he ſhall, becauſe ſhe is not capable nor lyable of any truſt, and therefore the conveyance made by the Recuſant was, as if it had been without any compulſion by reaſon of the truſt.

If a Coppiholder of the Kings Mannor pretendeth preſcription for a Modus decimandi againſt the Parſon, the right of Tithes ſhall be tried in the Exchequer, and a prohibition was granted to the Eccleſiaſtical Court in this Caſe.

Owen Ratliff was leſſee for years of the King rendring rent, and he aſſigned his Term to Sir Thomas Chichley in truſt, for payment of the debts of the ſaid Owen Ratliff, and after the Debts were paid, Chichley reſigned it, but in the interim between the aſſignment and the reſignment divers rents incurred to the King, and the Barons agreed, that theſe arrerages in Law may be levied upon the land of Chichley notwithſtanding the truſt, but becauſe the Court was informed, that the Executors of Ratliff had aſſets, and continued farmer of the farm at that time, they compelled him to pay it, and being preſent in Court, they impriſoned him untill payment made, and allowed him his remedy by Engliſh Bill againſt Chichley, and that by the agreement, Chichley was to have paid the rents to the King.

The Earl of *Cumberlands* Caſe.

IT was found by diem clauſit extremum after the death of G. Earl of Cumberland, that King E. 2. gave to the Lord Clifford (inter alia) the Mannor of Skipton in Craven to him and to the heirs of his body, and found further the diſcent in a direct line, until the time of H. 6. and that the firſt Donee, and all others to whom it deſcended were ſeiſed, prout lex poſtulat without determining any eſtate in certain in the Donee, and they found that H. 6. by ſufficient conveyance conceſſit Revertionem, nec non manerium de Skipton in Craven to Thomas Lord Clifford, to whom the eſtate given by E. 2. was deſcended and his heirs, by force whereof the ſaid Thomas was ſeiſed prout lex poſtulat, and found the diſcent to the Earl of C. now dead, and found that by fine, and recovery he conveyed an eſtate in this land to the uſe of his brother, that now is Earl of C. in tail, the remainder over to &c. and died having a daughter now Counteſs of Dorſet, who moved by Dodderidge the Kings Serjeant in the Court of wards, that this office was inſufficient, for by the pretence of the ſaid Counteſs, the firſt eſtate given to the Cliffords by E. 2. was a general tail, and then the fine levied, and the recovery ſuffered by the laſt Earl her father is no Bar, but that it may diſcend to this Counteſs as his heir in tail, and therefore Serjeant Dodderidge ſaid to the Lord Treaſurer then preſent in Court, that if this ſhould be allowed, that Jurors may finde generally a grant made, and ſhew no quallitie of the conveyance nor any place, or time, but if this were a grant of reverſion or of a poſſeſſion he ſaid, that many men by ſuch offices ſhould have their lands given away, whereunto they had no means for uncertainties to take a Traverſe, and as to inſufficiency of this office;

Pasch. 7. *Jac.* in the *Exchequer.*

fice, he said, that the insufficiency therein consisted first in matter. Secondly, in form; for the insufficiency of the matter is two fold. First, because that the office findes only, that King H. 6. by sufficient conveyance not limited any manner of conveyances, nor any qualitie thereof: which ought to be shewed, and it is material, because we may give a different answer thereunto; for against letters Patents we may plead one thing, and against an other conveyance we may plead another thing, and so our answer differeth according to the qualitie of the conveyance. Secondly, it is insuffient in matter, because it is found that H. 6. granted the possession, and that he granted the reversion nec non manerium which is repugnant, for if the King grant a reversion, then no possession passeth, and if he pass a possession, then no reversion passeth: and therefore it is repugnant to say, that he granted Reversionem nec non manerium which implieth a possession: also he said, that his exceptions to the office as to the Mannor of it, are two-fold. First the office doth finde any time of the grant made by H. 6. and this is material, for the grants upon Record take their force from the time of their date, as appears by Ludfords Case in Plowdens Commentaries, and he said, that at this time the case is material to be expresst, in respect that H. 6. was for part of his reign deposed, and after restored, and it might be in the time, that he was deposed by Edward the fourth; but unto that it was answered by the attorney of the wards, that the office found, that H. 6. granted &c. that it was not in the time when he was deposed: the second insufficiency in the Mannor is, because it is not found at what place, H. 6. made the said grant, and that this is material to be found by office, he vouched 36. H. 6. 32. and he said, that it is very requisite, that in such offices all circumstances ought to be expressed, in as ample certaintie as in a declaration, so that the partie prejudiced by the office may know where to search for the conveyance, but the Attorney general said, that there needs no such express finding of all circumstances by a Jury, as it ought to be in pleading, for it shall be taken by intendment in divers cases; but yet he said, that it appears by 1. Eliz. Dyer 174. it is a good plea to say, that A. granted a reversion &c. to the King, without shewing how; much more in office, which is the Act of the Jurors; and therefore Serjeant Harris cited the Book of 14, & 15. H. 7. 22. where an office found an estate tail without mention of the Donor, and yet good; and the Attorney general said also, that it appears by the finding of the Jury, in Fulwoods Case Cook lib. 4. that the Jury need not precisely to finde all circumstances, for if there be convenient certaintie, the residue shall be supplied by intendment, as it is there said, and the Attorney said, that whereas it hath been objected, that the issue is evil, because it is found that H. 6. granted the reversion, and also the Mannor and Castle aforesaid, and doth not limit incertaintie, that the King granted a reversion, or that he granted a Mannor in possession, to that he said, that it is clear, that the King may after recital of a particular estate grant the reversion, nec non terras sive manerium, and then be the land in lease, or be the lease void in Law, yet the land shall pass; and this is his course alwayes in granting the Kings lands to others, and therefore the Jury did well, to finde the truth, without determining what should pass, for admit, that there were no estate precedent in being, yet by this finding it appears plainly, that the Mannor and Castle should pass by the grant, in the time of H. 6. to which the Lord Cook agreed for Law, and so he said, it was his use when he was Attorney general, to which also the Lord Treasurer, Flemming chief Justice, and Tanfield chief Baron agreed, and the Attorney general said, that his use was, if A. had a lease from the King of B. acre, which by effluction is to determine in Anno. 1612. and the said A. doubting that this lease was not good in Law, prayed to have a new lease; that in this case, he recited the first lease in the new letters Patents; and thereby granted the land for twentie years from &c. which shall be in Anno 1612. or from the sooner determination of the former lease, and the Judges allowed it to be good, and Dodderidge Serjeant said, that after the difference taken between the plea-

ding,

ding, and the finding of the Jury, it ſeemed to him, that there is a great difference between them, but after the finding of the Jury upon an office, as our caſe is, and a pleading, there is no difference, for the office is a thing, to which an anſwer may be made, but a verdict given upon iſſue joyned between the parties, hath no other proceeding, but to judgement immediately; and therefore ſuch a verdict ſhall be divers times ſupplied by the conſtruction of the Judges, but a verdict upon an office, ought to be as certain as an indictment, becauſe the partie may Traverſe, and to prove, that upon ſuch uncertain offices, there is no remedy by Traverſe, he vouched the caſe of 3. H. 4, 5. upon an inſufficient office after the outlawry of A. and no time is found of the outlawry, and he obſerved out of the ſaid book, that the partie outed by the ſaid inſufficient office had no remedy by Traverſe, but was compelled to make a motion to the Court; and after this caſe for difficultie was referred to the two chief Juſtices, and the chief Baron to conſider upon, who the ſaid Term at Serjeants Inne appointed it to be argued, where Walter of the inner Temple moved, that the office was inſufficient, and he cited one Baylies caſe to be reſolved here, where an office found, that A. died ſeiſed de quodam tenemento, that office was not good, becauſe of the incertaintie, for it may be a rent or a houſe, but otherwiſe it would be, if it were upon a ſpecial verdict after iſſue joyned, as he ſaid it was there agreed, alſo he ſaid, that it was there agreed, if an office findes that A. was ſeiſed of B. acre in fee, and died, it is not good, becauſe it is not found, that he died ſeiſed, yet in pleading, it is good, becauſe, when the fee ſimple is ſhewed to be in a man, it ſhall be intended to continue in him until the contrary appears, alſo in Paſch. 43. Eliz. Morton and Brigs Caſe an office found A. to be ſeiſed of certain lands in D. holden in capite &c. it is not good without ſhewing the certaintie &c. ſo if the office had found, that he was ſeiſed of 100. acres in D. and that certain of them were holden &c. this is not good, without ſhewing which &c. as it was there alſo agreed, in 26. H. 8. the condition of an Obligation was, that the Obligor ſhould make a ſufficient eſtate of B. acre, in debt upon this obligation, it is no good plea to ſay, that he had made a ſufficient conveyance &c. without ſhewing in certain what it was: Mich. 32. & 33. Eliz. between Ireland and Gold, a man pleaded for title that A. was ſeiſed, and by deed inrolled gave and granted ſuch land &c. this is no good pleading, becauſe no ſufficient certainty therein, alſo it is not good, becauſe there is no certain time ſhewed of the grant made, and although that a grant by record is good, as it is in 37. H. 6. yet in pleading, he ought to ſhew the time of the making of it, 20. H. 7. alſo it is ſpecially required to have the time of the making of the grant to be found here, becauſe there were divers Acts of Reſumption made to nulliſie grants by H. 6. in ſome of the years of his raign, and it may be that this grant was made, within thoſe times contained in the Acts of reſumption; and therefore &c. Hutton Serjeant argued, that the office finding quod conceſſit generally is good, and ſufficient without theſe words, by ſufficient conveyance, and the Traverſe may be generally, non conceſſit modo et forma, and by 40. Aſſiſe pla. 24. it is ſufficient to ſay, that A. was ſeiſed in fee, and committed a forfeiture 5. Ed. 4. 10. accordingly, alſo he ſaid, that it appears by 14. & 15. H. 7. if an office findes that A. was ſeiſed in tail, it is a good office, but in pleading not good without ſhewing how; alſo in Knights Caſe Cook lib. 5. 56. it appears that an office is good enough to intitle the King if it have ſubſtance, although the manner be not formal 3. H. 6. an office finding that A. died ſeiſed, and findeth not of what eſtate, and yet it is good to intitle the King: Bacon Solicitor general contra, and he ſaid, that they are in peigled by reaſon of this office, for the partie grieved knoweth not, where or how to Travers, becauſe it is not found by what conveyance H. 6. granted the reverſion, for if it be by letters Patents, a man cannot plead to them nul tiel Record, alſo a verdict upon an office is principally to inform the partie who may Traverſe, and not like a verdict upon iſſue joyned, whereunto the partie hath no anſwer, but is only to inform the

Paſch. 7. *Jac.* in the *Exchequer.*

Paſch. 7. *Jac.* in the *Exchequer.*

Judges, who ought to Judge: Hobert Attorney generall contra, yet he agreed, that if a patent be pleaded, a man cannot ſay againſt it nul tiel Record; but he ſaid, that Lucies Caſe 14. H. 7. is a ſtronger caſe then ours, where an office is holden good, finding a man to be ſeiſed in tail, and upon that book he relied much, to prove the office to be good. Bacon Solicitor ſaid, here is an incertaintie in the conveyance, and alſo in the eſtate, which is not in the 14th. of H. 7. for there is an expreſs finding of an eſtate and a dying ſeiſed thereof; but here the finding is, that he was ſeiſed prout lex poſtulat: Harris Serjeant, that the office is good, and he vouched alſo Knights Caſe Cook lib. 5. vouched by Hutton, and alſo the caſe of Alton-woods Cook lib. 1. that an office there was holden good, although more uncertain then this office, and here the office is only, that H. 6. granted, and ſhewed how; and therefore &c. Walter ſaid, that it appears by the argument of Keeble in the caſe 14. *H.* 7. 26. where he argued, that where the right of the eſtate is to be inquired, there it ought to be certain in all circumſtance; but otherwiſe it is, if the inquiry be only upon the poſſeſſion, for there if a ſufficient poſſeſſion be found it is good enough. And Brian chief Juſtice ſaid, the office was void in that caſe fo. 27. and the Judges in this caſe would be adviſed until the next Term; and the next Term it was recited again, by Nichols Serjeant for the Earl of Cumberland, and by Bacon Solicitor for the the Counteſs of Dorſet, at which day the Judges ſaid, that the queſtion in the caſe is only this, viz. if an office finds only, that A. was ſeiſed of a particular eſtate, and that the King granted the reverſion &c. without ſhewing how, or other particular certainties, and to that, if ſuch an office be good or not they ſaid, that it is not eaſie to determin, for although it be good in the caſe of a common perſon, yet it will be greatly miſchievous to the King, if by ſuch offices his inheritance ſhould be deveſted, in reſpect no Traverſe can be to ſuch an office, but yet they would not award the office to be void, but adviſed the Attorney of the wards to grant a ſpecial præmunire to the heir general, who was the Counteſs of Dorſet, *Salvo jure cujuſlibet* &c. and ſo in an Action at the Common Law, the Earl might trie his right and title, and not upon the validitie of an office; and ſo it was done.

The King againſt the Earl of *Nottingham* and others.

BEtween the King by Engliſh Bill, and the Earl of Nottingham and others Defendants, but concerned Sir Robert Dudley in intereſt, and was as followeth viz. Sir Robert Dudley intending to travel beyond the Seas, did by indenture inrolled the 10th. of June, for a valuable conſideration expreſſed, but none paid, convey the Mannor of Killingworth amongſt other lands to the Earl of Nottingham &c. in fee, but the Barganees were not privy unto the Deed not till afterwards, and in the Deed there was a proviſo, that upon the tender of an Angel of Gold all ſhould be void, and covenants on the part of the Barganees, that they ſhould make all ſuch eſtates as Sir Robert Dudley appointed, and after Sir Robert Dudley by licence from the King Travelled beyond the Seas to Venice, and after the Barganees made a leaſe to Sir Robert Lee, to the intent, that the Lady Dudley ſhould take the profits of part thereof, for ten years, if the eſtate of the Barganees ſhould continue ſo long unrevoked, and after the King having notice of divers abuſes made by the ſaid Sir Robert Dudley in the parts beyond the Seas, commanded the ſaid Sir Robert Dudley by privy Seal delivered unto him the 10th. of April in the 5th. year upon pain of forfeiture of all his lands and fortunes to return again immediately &c. and after a Commiſſion iſſued forth to inquire what lands and Tenements &c. Sir Robert Dudley had, or others for him in uſe, or upon confidence, and the Jury found this ſpecial matter,

tee, but found not any fraud expreſly: and thereupon the King exhibited his Bill here, againſt the Bargainees, and alſo againſt Sir Robert Lee their Leſſee, who truly diſcovered all this ſpecial matter, and that they were not knowing of the Deed until long time after making of it, and that no conſideration was given by them in this caſe, for the lands ſo bargained: and it was argued by Sir Henry Mountague Recorder of London for the King, if theſe lands ſhould be ſeiſed or not, he conceived that there are three things conſiderable in the caſe. Firſt, the contempt of Sir Robert Dudley in his not returning upon the ſight of the priy Seal, and of what quality this offence is. Secondly, what intereſt the King had by this offence in the land of Sir Robert Dudley being the offender. Thirdly, if notwithſtanding theſe offences, theſe lands ought to be ſeiſed for the King; touching the firſt point he ſaid, that it is requiſite to examine, if a ſubject at the Common Law may go beyond the Seas without Licence, and in what caſes the Law allows a man to go out of the Realm without Licence, and as to that he ſaid, that it appears by the reaſon in the 12th. of Eliz. Dyer, that at the Common Law every man may go out of the Realm; but the Statute of the 5. Richard 2. reſtraineth all but Merchants, noble men, and Souldiers, and as he conceived this was but an affirmance of the Common Law, notwithſtanding the Book before cited: and to prove that, he ſaid that the opinion of Dyer in the firſt Eliz. fo. 165. ſeemeth to agree: alſo it is proved by divers Licences granted before this Statute; ſee F. N. B. fo. 85. in the writ de ſecuritate invenienda, quod Se non divertat ad partes exteras ſine licentia regis, according to the 12. Eliz. in Dyer: and he further ſaid, that there are two reaſons to prove, that no man may go beyond the Sea without Licence at the Common Law, for by 2. E. 3. and the 16. E. 3. and Glanvill in his Chap. of Eſſoynes, by ſuch means the ſubjects may be deprived of their ſuits for debt, and alſo the King may be deprived of the attendance of his ſubject about the buſineſs of ſtate, and it appears by the Regiſter fo. 193. & 194. that religious perſons purchaſed licences to go beyond the Seas, and it appears by Littleton in the Chap. of confirmation, that a diſſent takes not away an entry of him who is beyond the Sea, except it be by the Kings commandment, ſee the caſe intended by Littleton in the Chap. of Continual claim, there it ſeems to be a doubt to Littleton; then he argued further, if the Common Law alloweth not a ſubject to go beyond the ſea without licence, but reputes it a great contempt, this is a great contempt in him, who will not return by the Kings command, and the Law hath alwayes puniſhed ſuch contempt, as it appears by Dyer fo. 28. & 177. & 19. E. 2. John de Brittons Caſe: alſo there is a preſident for ſeiſure of all his lands for ſuch contempt, and he vouched the book what the King had done, where he cited, that the Prior of Oſwaldſhire forfeited all his lands and poſſeſſions for ſuch contempts, and ſo concluded the firſt point of the quality of the offence, and ſpoke nothing of the licence which Sir Robert Dudley had of the King at the time, the which as it ſeemeth was not expired, nor the power which the King had to Countermand it within the time, to which the Attorney general in his argument did ſpeak: to the Second point it ſeemeth, that the contempt giveth ſuch an intereſt to the King, that he ſhall retain the land until conformity, for he who dwelleth in contempt, ought not to have any poſſeſſions here, and he cited the 22. H. 6. and the 21. H. 7. and divers other books which are cited in Calvins Caſe Cook lib. 7. alſo he ſaid, that there is a difference, where the King is offended as King of England, and where as head of the Kingdome, as this caſe is, which is a greater offence in qualitie; then for any offence for which men ſhould loſe their lives, as if they ſhould ſtand mute upon their arraignment &c. alſo there is a great difference between this contempt, and by outlawry, and therefore in caſe of outlawry, he needs no office, but the King is only intitled to the profits of his lands, which is but a tranſitory Chattel, in which caſe an office is not neceſſary, but where an intereſt coms to the King, there ought to be an office, and he vouched Pages Caſe in Cook lib. 5. and Sir William

Paſch. 7. *Jac.* in the *Exchequer.*

Paſch. 7. *Jac.* in the *Exchequer.*

liam Herberts Caſe, but he did not endeavour to prove what intereſt came to the King in this caſe, for when an intereſt comes to the King, there ought to be an office; as to the ſecond point he ſaid, that truſt between parties is fraud, as to the King, and in this caſe the badges of fraud are found by the office. Firſt, his purpoſe to go beyond the Seas. Secondly, his Barganees are not privy to the Deeds. Thirdly, no ſumme was paid by them. Fourthly, here is a power of Revocation. Fifthly, covenants to execute all grants, as Sir Robert Dudley appointed. Sixthly, the ſubſequent Act, that is, viz. his ſtaying beyond the Seas, and his not returning upon the Kings command, and although in this caſe there be no fraud in the parties who are Barganees, and ſo the fraud is only of one partie, yet it appeareth by the 19. of H. 8. 12 that if an infant hath right to land, and a ſtranger diſſeiſe the Tenant to the intent to infeoffe the infant without Covin in the infant, yet the infant ſhall not be remitted, and he vouched Delamores caſe in Plowden to be accordingly: alſo there are divers caſes in our books to prove the inveterate hatred, which our law beareth to all Acts which are fraudulent, and therefore in 44. E. 3. & 41. Aſſiſe pla. 28. it appears that a recovery upon a good title, although it be in Dower, which is favoured in Law againſt a Tenant, who comes to the land by Tort and Covin is void, which caſes and many other you may ſee in Farmors caſe Cook lib. 3. and the 12. Eliz. Dyer fo. 294. and as it is ſaid in Twines Caſe Cook lib. 3. all frauds are covered with truſt expreſſed, or implyed, and here is an expreſs truſt, and he vouched alſo Cook lib. 5. Gooches Caſe, and alſo Englefields caſe, and Pauncefoots caſe cited in Twines caſe Cook l. 3. fo. 83. alſo he ſaid, that this conveyance being void by reaſon of the fraud, by the Law it is more clear, that it ſhall be decreed to be void, here the Deed being in court and courſe of equity, and therefore he ſaid, that it hath been decreed in this Court for equity, that if a man outlawed taketh bonds in the name of another, that they ſhall be forfeited to the King: alſo it hath been decreed in Venables Caſe, that where a widdow upon good devotion had deviſed great ſummes of money, for the relief and ſuſtenance of poor ſilenced Miniſters and Preachers, for not ſubſcribing to the Commons &c. to be ordered and paid to them by the diſcretion of the Executors, that the money ſhould be diſpoſed for the maintenance of poor conformable Miniſters, by the diſcretion of the Executors, and not to them who refuſed to ſubſcribe, for when a thing is diſpoſed, to maintain contempt and diſobedience in any, this ought to be ordered and diſpoſed by the Court to a contrary end and uſe; and ſo in the principal caſe, in ſo much that the conveyance was made by Sir Robert Dudley, for the maintenance of himſelf in contempt, and for the maintenance of his wife and other uſes, this by the rules of equity ſhall be decreed to be void, and in regard the King is offended by the contempt, he ought to have means to puniſh it, and ſo he prayed that it may be decreed for the King. Hutton Serjeant the ſame day to the contrary, and he argued firſt, that this confidence is as an uſe at the Common Law, which was not forfeitable: and ſecondly, admit that this conveyance be fraudulent, yet it is not now to be avoided: and theſe are the grounds whereupon he would inſiſt in the maintenance of his conveyance againſt the King; but firſt, as to that which hath been ſaid, that at the Common Law a man could not go beyond the Sea without the Kings licence, he ſaid, that he thought the contrary; for it appears plainly by the book 12. Eliz. Dyer fo. 296. and F. N. B. cited accordingly, that any man may go beyond the Sea to travail, except there be a proclamation, or a writ of ne exeas Regnum to reſtrain him, ſo that he agreed, that every man was prohibitable before his going, or after by recalling, but without a prohibition or recalling his departure was no offence: but he agreed, that if a man be prohibited, or recalled, that for this contempt his lands ought to be ſeiſed, and that the King hath intereſt to diſpoſe of them, as it is proved by the preſident of John de Britanies caſe, in the 19. E. 2. and vouched in the 2. Ma. Dyer 128. and this is alſo proved by other preſidents, and authorities, as 39. Aſſiſe pla. 1. where

it

it appears, that for a contempt of the Arch-Biſhop of Canterbury, for not executing of the Kings writ, that the King ſeiſed his lands, and held them during the life of the Arch-Biſhop, and alſo *Englefields* caſe in Cook lib. 7. proveth that the King hath power to ſeiſe and diſpoſe for ſuch a contempt, and therefore he would not argue, what intereſt the King ſhould have by ſuch ſeiſure, but for the matters which he intended. Firſt, he thought clearly, that this confidence betwixt the Bargainor, and the Bargainee was as an uſe at the Common Law, and that ceſtuy que uſe, ſhould not forfeit this uſe at the Common Law, is directly proved by 11. H. 4. fo. 52. where without an expreſs Statute, an uſe was not forfeited as he ſaid, and he vouched accordingly, 5. E. 4. fo. 7. where it appeareth that ceſtuy que uſe, ſhall not forfeit the land at the Common Law, and the reaſon is, becauſe that it is ſubject to the forfeiture of the Donees, and it is inconvenient, that the ſame land ſhould be ſubject to ſeveral forfeitures at the ſame time by ſeveral men, viz. the Bargainor and the Bargainees, and he ſaid, although that theſe uſes were begotten by fraud, as it appears in our books, ſee Chudleys caſe, Cook lib. 1. yet in ſo much, that without an expreſs Statute they were not forfeitable, by the ſame reaſon a truſt or confidence is not forfeitable (although they are begotten by fraud) without a ſpecial Act of Parliament: alſo in our caſe there are not any Badges of fraud, but only as a truſt betwixt the Bargainees, and that a bargain and truſt may be without fraud, although the Bargainor continue poſſeſſion againſt his Bargainee, which is another argument, that there is no fraud in the caſe, and the eſtates after made to the Tenants now in poſſeſſion, viz. Sir Robert Lee &c. for the Bargaines were not made by the appointment of the Bargainor, but of their own head: alſo he ſaid, that if here be any fraud, it is matter of fact, whereof the Jurors ought to have inquired, and the Jury here have found no fraud, and to prove that the fraud ought to be found by the Jury, he vouched Wardenfords caſe 2. & 3. of Eliz. Dyer 193. & 267. where it is alſo ſaid, that although a fraud be found by the Jury, yet if it be found ſpecially not to defraud the King, but the Creditors, then the conveyance ſhall be good againſt the King, and ſo he concluded the firſt point. Secondly, admit that it was found, that this conveyance was fraudulent, yet it is not void againſt the King, for it ſeemed to him, it ſhall be avoided by fraud only, by thoſe who have an antient right or antient duty, and if in this caſe there were any fraud, this was long time before any title or right accrewed to the King, for that was two years after this conveyance, and to prove it, he vouched Upton and *Baſſets* caſe cited in Twins caſe, in Cook lib. 3. there it is ſaid expreſly, that a conveyance by fraud is void only in reſpect of an antient title: ſee 22. Aſſiſe pla. 72. accordingly; but the Statute of 27. Eliz. makes ſuch a conveyance void, to thoſe who have a preſent right, if there were a valuable conſideration as is not in our caſe; and therefore we are out of this Statute: and alſo he ſaid, that he agreed the caſe cited of the other part, if a man outlawed purchaſe goods, or takes an obligation in truſt, the King ſhall have them, for this is by the Statute of the 3. H. 7. cap. 4. but this concerns not land, and therefore we are at the Common Law, and as a Statute was requiſite to be made, to make an uſe forfeitable, which was not forfeitable at the Common Law, it is alſo to make an obligation in the name of another to be forfeitable, although it was not at the Common Law, ſo if we will have a confidence or a truſt to be forfeited: we ought to have a Statute made to this purpoſe, and as to Pauncefoots caſe he ſaid, that the King had a title by the invietment of recuſancy, before the conveyance made by Pauncefoots; but ſo it is not in our caſe, whereby appeareth a plain difference betwixt the caſes; ſee the 14. H. 8. fo. 8. the Attorney-general to the contrary at another day, and firſt he ſpake to the quality of the offence viz. the contempt, and this offence as he ſaid, is aggravated by theſe circumſtances. Firſt, the command of the King himſelf came, and not of any inferiour officer, as Sheriff &c. and it is immediately directed to the partie himſelf. Secondly, the command is, that

Paſch. 7. *Jac.* in the *Exchequer.*

Paſch. 7. Jac. in the Exchequer.

that he ſhall return upon his faith and allegeance, which is the ſtrongeſt compulſion that can be uſed. Thirdly, the thing required by the King, is the principal dutie of a ſubject, viz. to be at the command of the King for ſervice, and not as the common ſummons in Law is to anſwer at the ſuit of I. S. and he ſaid, that this contempt is to be accompted in quality of a contempt, from the very time when the privy Seal came to his hands, for the words quod indilate &c. and it hath been in all ages the courſe, and uſe to puniſh contempts of this kinde by ſeiſing their lands, and he vouched in proof thereof, the preſidents of John de Britons caſe in 19. E. 2. and of Edward de woodſtock, in the time of E. 2. and the caſe in 2. Ma. Dyer fo. 128. & 2. Eliz. Dyer Barners caſe fo. 176. and 23. Eliz. Dyer 375. and Englefields caſe Cook lib. 7. moreover he argued in ſo much it is clear, that the King ſhall ſeiſe his lands for this contempt, it is to be conſidered what eſtate or intereſt the King ſhall gain by this ſeiſure, and as to that he thought, that the King hath an eſtate at the leaſt; for the life of the offendor, and that he conceived is proved by the preſidents, for theſe words are uſed in the ſeiſure &c. donec aliter duxerimus ordinandum &c. and he ſaid that this is proved by Englefields caſe, and alſo by the way and manner of the ſeiſure, and diſpoſing of the land for ſuch contempt: in 23. Eliz. Dyer 375. by the Statute of 13. and 14 Eliz made againſt fugitives; alſo he uſed this reaſon to prove, that the King had an eſtate for life, viz. becauſe the offender by this contempt, had impliedly deſerted his land, and left it to the Kings diſpoſe, and then it is all one, as if he granted the land to the King to hold, and uſe as long as he pleaſeth, and ſuch an expreſs grant will create an eſtate for life in the King; as is proved by 35. H. 6. where it is agreed, that if I give land to A. as long as he will, this is an eſtate for life, and ſo here by this implied Act &c. alſo as to that that may be pretended in this caſe, that the King granted licence in this caſe to Sir Robert Dudley, to travel for a time certain, which time is not yet expired, and therefore the contempt qualified, or ſatisfied by reaſon of this licence: to that he ſaid, that notwithſtanding that was the caſe, yet the contempt is all one, as if he had no licence at all, in regard it is countermanded by the privy Seal, which injoyns him to return, and to prove that this licence is alwayes countermandable by the King; he ſaid, that beſides the common uſage and obedience of countermands of this kinde, he ſaid, that it was to be proved by reaſon alſo and authority of our books; for although here be a licence indeed; yet there is great adverſitie between a licence indeed which giveth intereſt, and a licence indeed which giveth only an authoritie, or diſpenſation, as in our caſe, for the one is not to be countermanded, but the other is, as appeareth by 5. H. 7. and 1. Ma. Dyer 92 and admit, that after this licence, and before the departure of Sir Robert Dudley, the King had ſaid unto him, you ſhall not go, this had been a good countermand, as ſeemed to him, and he vouched 9. E 4. 4. and 8. E. 4. if I licence A. to ſtay in my houſe for three dayes, yet I may put him out in the mean time, but otherwiſe it is, if I licence A. to hold my land for 3. dayes, becauſe there an intereſt paſſeth, and the reaſon wherefore this licence in our caſe is countermandable, is becauſe all licences of this kinde have tacite conditions annexed to them, for no Act or licence will free a ſubject from his allegeance, as appeareth by Doctor Stories caſe in the 13. Eliz. Dyer fo. 300. and no man can put off or be diſmiſſed of duties which belong to a ſubject, no more then he can put off his ſubjection, and this is the reaſon that an honor or dignitie intailed, ought to be forfeited, although it be intailed; for the honor which is given by the King hath a tacit condition in Law annexed unto it, and it ought not to continue in him who committeth Treaſon, nor in his poſteritie, although that the partie had but an eſtate tail therein; ſee Nevels caſe Cook lib. 7. and ſo had the King his licence, which is but a diſpenſation for the time, and countermandable by the King, and he ſaid, that the Book in 2. Eliz. Dyer fo. 176. makes it a doubt, but he thought it clear for the reaſons aforeſaid: and as to the material point, viz. if this land ſhall be privileged from ſeiſure by reaſon

of

of this bargain or not, and he said, that it shall not be privileged, for this conveyance which is revokable at the will of the Bargeinor is meerly fraudulent against any interest of forfeiture, for otherwise the Kings subjects are but as feræ naturæ, which when they are out of their pale, the King had no means to reduce them, within the Park again; for in this case had no means directly to punish this offence upon the body of the offender, but by the depriving him of the means of his maintenance, and although there be no fraud here in the parties Bargainees, yet the fraud in the Bargainor makes the conveyance void against the King; for as it appeareth by our books, the King cannot be an instrument of fraud, although he may be party thereunto; see 17. and 21. E. 3. so in the case of an infant cited before by Mountague, all which and many others to this purpose of fraud are cited in Farmors case Cook lib. 3. fo. 48. and whereas it was objected, that here can be no fraud intended in the offender, in regard he had a licence to travel, and it cannot be intended, that he presupposed any countermand of this licence, and to commit a contempt by his refusing to return, and so to save his lands by this conveyance, in respect this countermand is a thing whereof he could not have divined, to that I answer, that the contempt subsequent is a sufficient proof of such precedent conjecture, and that the conveyance was made fraudulently to prevent the prejudice, which might accrew unto him by such contempt, and this opinion will appear by the makers of the Statute of 13. Eliz. cap. 3. and 14. Eliz. cap. 6. made against fugitives, and may well be collected upon the perusal of those Statutes, and that the Judges here ought to make such construction, upon the subsequent Act; he vouched the case of Doctor Ellis in Plowden, and Saunders case in the matters of the Crown, happening at Salop, by which cases it appeareth, that the Judges proved the first intent by secondary Actions subsequent by way of discourse, and therefore in *Saunders* case, the partie having an express intent to poyson his wife, delivered unto her a poysoned apple, and the wife not knowing it to be poysoned, gave it to her child, who died thereof: there the indictment against Saunders was that of malice forethought &c. he intended to murder the child, although this was not his first intention, so in the other case there cited; if a man intend only the death of A. and being fighting with him, be a stranger interposeth himself to part the affray and he is slain, this is wilful murder, although here was no primer intent to kill B. but this is made an intention by legal collection; and so in our case, here is intentio legalis and not actualis, and yet as wel unavoidable as any other; also although it hath been objected, that by the common Law none shall avoid a conveyance by reason of fraud, except he who hath a former interest, and the Statutes give no authoritie to any, but to purchasors, upon valuable consideration, yet I say, that the Statute of 13. Eliz. is to avoid all fraudulent conveyances, against such as by any means may be hindred thereby, yet the intention was not to defraud the partie, who is thereby defrauded; but some other, and therefore although it was not to defraud the King in our case, yet being fraudulent it is void against him by this Statute, for he should be hindred thereby: also the proviso in this Statute saveth such conveyances only, which are upon good consideration, and bona fide, and that is such wherein simple and plain dealing are used, but in this conveyance there was not any simple and plain dealing used, for the Bargainees paid no money, nor ought to take no profits of the land, nor dispose of any estate therein; and therefore fraud, for Dolus est Machinatio cum aliud dissimulat, aliud agit: also the preamble of the Statute of the 27. Eliz. willeth that conveyances shall be void which are made to the use of him, who maketh the conveyance, or otherwise to defraud purchasors, although that the body of the Act mentioneth such only, which are to defraud purchasors; and he vouched the Statute of the 28. Eliz. made against conveyances by resumption, and he said, that Twines case in Cook lib. 3. proveth our case effectually to be a void conveyance which cannot be answered; but the Lord Treasurer said, that there was fraud in both parties, and he argued further

Pasch. 7. *Jac.* in the *Exchequer.*

Paſch. 7. *Jac.* in the *Exche-quer.*

further, and vouched Goodales caſe Cook lib. 5. to prove that a Deed ſhall not be deemed to be good, except it be free from all fraud or clandeſtine agreement, as it was there reſolved, that the payment for performance of a condition was not good, as to ſtrangers, by reaſon of a precedent agreement, and Burrels caſe Cook lib. 6, where it appeareth, that no fraud ſhall be accounted bona fide, as to ſtrangers which is accompanied with truſt &c. alſo although here is not any fraud expreſly found by the office, yet he thought, that the equity of the caſe appears plainly: and that it ſhall be for the King, and he vouched divers decrees in this Court to prove it, as 43. Eliz. Howſe was outlawed and took divers bonds of Carne in the names of others his friends, viz. of Marlow, and others in truſt; alſo took Statutes in their names in truſt, and it was decreed here, that the King ſhould have all, by reaſon of the fraud, although it be not found by any office, and in Hoards caſe it was decreed here, that whereas the ſaid Hoard betwixt the years of 25. and 32. had lent divers ſummes of money to Sheldon of Bealie, and had taken divers obligations, and other ſecurities of him in others names before his conviction, yet it was decreed to the King in this Court without any fraud found by office; and in Sir Walter Raughlies caſe the ſame year decreed in this Court, that whereas Sir Walter Raughlie being poſſeſſed of a tearm of 100. years of he having a determination to purchaſe the reverſion in fee of the ſame land, conveyed his Tearm to his eldeſt ſon to the intent it ſhould not be drowned; and therefore about 40. Eliz. he purchaſed the fee, and after in the year &c. of our King that now is, he committed Treaſon, and was attainted, and it was decreed here, that the King ſhould have the land diſcharged of this leaſe, viz. in poſſeſſion, and although no fraud be found in the caſe, but only it appeareth by circumſtances of witneſſes here examined, that Sir Walter Raughley took the profits of the land, and held Courts in his own name until the attainder, yet the ſaid aſſignment was conceived to be in truſt, and therefore decreed to be void againſt the King as for fraud, although he was convicted of Treaſon a long time after, and ſo the Kings title, ſubſequent to the ſaid aſſignment; and he vouched Walter de Chirtons caſe in 24. E. 3. Rot. 4. alſo as to Mr. Wardenfords caſe in 2. and 3. Eliz. Dyer 193. and the 9 and 10. of Eliz Dyer 267. but our caſe is different from them in two material circumſtances which alter the law in the caſes. Firſt, we are in a Court of equitie by Engliſh Bill, where the Judges are only to adjudge upon the fraud, and there they were in a Court of Law, and the fraud was the matter of fact, which ought to be expreſly found by the Jury, as appears by the books. Secondly, in that caſe the Jury found expreſly, that the conveyance was not by fraud to deceive the King of his wardſhip, but only to deceive the Creditors &c. but in our caſe there is no ſuch negative, and therefore it differeth much: ſee Dyer 267. and 268. as to the finding in the negative: at another day in the ſame Term of Eaſter 7. Jac. the Barons decreed for the King, and the Lord Treaſurer agreed, and he then demanded of Tanfield chief Baron, if upon the return of Sir *Robert* Dudley he ought to have his lands again of right, or if but upon ſpecial grace, and the Lord chief Baron anſwered, that he ſhould have them of right: ſee Bartues caſe in Dyer, but the Lord Treaſurer ſaid, that he ſaw no reaſon to ſatisfie himſelf therof.

Doillie againſt *Joiliffe.*

DOillie Plantiff againſt Joiliffe in an Action upon the caſe, for falſe impriſonment of the Plantiffs wife, the caſe was, that Leonard Lovies was formerly Plantiff in an action in the Common Pleas, againſt Julian Goddard a feme ſole, and in this action the Plantiff and Defendant were at iſſue: and a venire facias was awarded, and before the return thereof; the ſaid Julian took to husband Doillie now Plantiff, and after upon a ſpecial verdict found in the ſuit, judgement

judgement was given in the Common Pleas for the ſaid Julian againſt th ſaid Leonard, upon which judgement Leonard brought error in the Kings Bench, and a ſcire facias was awarded againſt Julian by the name of Julian Goddard as a feme ſole, and ſhe appeared by Attorney as a feme ſole, and this (as the Defendant ſaid in his anſwer) was by the conſent of her husband now Plantiff, and after judgement was given to reverſe the judgement in the Common Pleas, and the entrie of that judgement (as it was pleaded by the Defendant here) was, quod prædict Leonard Lovies recuperet &c. verſus prædict. Julianam &c. and coſts and damages were taxed &c. upon which judgement the ſaid Lovies ſued a Capias ad ſatisfaciendum againſt Julian Goddard, and by vertue of that writ the Defendant here the Sheriff of Devon. took the ſaid Julian being the Plantiffs wife, and impriſoned her until the Plantiff paid 10. l. which was the coſt taxed by the Kings Bench for her deliverance, upon which impriſonment the husband only hath brought his action againſt the Defendant being Sheriff: Davenport of Grayes Inne argued for the Defendant; and firſt he thought, that between the parties to the error, and the firſt action in the Common Pleas there is an eſtoppel, and admittance, that the ſaid Julian continued a feme ſole, for the proceſs in all the proceedings ought to be as it was in the Original, and he vouched 18. Aſſiſe pla. 16. by which book it appears, that if a man bring an aſſiſe for lands in the Countie of O. and the Tenants plead a Common recovery of the ſame land in the Common Pleas, this doth conclude the partie to ſay, that the lands did lie elſe where &c. alſo if an original be depending, and before the firſt Capias, or proceſs awarded the Defendant intermarrieth, and after a capias iſſueth againſt her as a feme ſole, this is well awarded, lib. 5. E. 4. 16. and alſo 5. E. 3. fo. 9. and 10. alſo he ſaid, that ſuch a thing as is done between the plea, and not after the judgement is not material to alter the proceedings in that courſe it was begun, for the ſame partie againſt whom judgement is given, ſhall error have againſt him for whom the judgement is given, except ſhe had married after the judgement, for then he agreed, that the writ of error ſhall be brought by the husband and wife, in caſe judgement had been given againſt the wife while ſhe was ſole, 35. H. 6. fo. 31. and 12. Aſſiſe pla. 41. and it alſo appears by 18. E. 4. fo. 3. if Treſpas be brought againſt a married wife as againſt a feme ſole, and ſhe appears as a feme ſole, and judgement is given, and execution accordingly, this is good until it be reverſed by error, and the Sheriff in ſuch caſe never ought to examine if it be evil or not, no more then if Treſpas be brought againſt A. my ſervant, by the name of B. and A. is taken in execution, the Maſter ſhall not take benefit of this miſnaming, admitting that A. ſhould puniſh the Sheriff for it; alſo he vouched one Shotbolts caſe 10. and 11. Eliz. Dyer and 15. Eliz. Dyer 318. in the Earl of Kents caſe, which prove that the Sheriff is to be excuſed, for taking me by a falſe name, and if the Judges admit this falſe name, yet this judicial writ ought not to be examined by the Sheriff, and it was adjourned.

Paſch. 7. *Jac.* in the *Exchequer.*

Shoftbey againſt *Waller* and *Bromley*.

SHoftbey brought an action upon the caſe againſt Waller and Bromley, and declared that the Defendants conſpired, that the ſaid Bromley ſhould commence a ſuit againſt the Plantiff, and that the Plantiff was then worth 5000. l. and that he was then dwelling in Middleſex, and that the Defendants knowing thereof, maliciouſly and falſely agreed, that the ſaid Bromley ſhould lay his action in London, and proſecute it until the Plantiff were outlawed in the ſaid ſuit, to the intent that his goods ſhould be forfeited to the King, and after in performance of the agreement aforeſaid; the Plantiff ſuggeſted, that he was dwelling in London, and laid his action here, which was proſecuted until the Plantiff here was outlawed, to his damage &c. Fanfield chief Baron thought, that if the ſuggeſtion was by

Paſch. 7. *Jac.* in the *Exche-quer.*

Bomley, to make the proceſs into a wrong County, it ſeemed that the Action ſhould lie againſt him only; but in regard it is ſhewed in the Declaration, that the ſaid ſuggeſtion was made by him in perfoꝛmance of the pꝛecedent agreement that the action lieth againſt both, which the Court granted. Godfrey in this action moved in arreſt of judgement, and that foꝛ two cauſes, the action lieth not upon the matter here, it appears by the 4. Eliz. Dyer 214. that a man may lay his action wherein an outlawry lies in London, and then by the Statute of 6. H. 8. cap. 4. pꝛoclamation ſhall iſſue into the Countie where he dwelleth, therefoꝛe the ſuing of him in another Countie is no ſuch act, wherefoꝛe an action ſhould be bꝛought, no moꝛe then if befoꝛe the Statute of W. 2. cap. 12. a man had bꝛought an appeal Malicioſe, yet no remedy befoꝛe the ſaid Statute, as appears in the 13. H. 7. in Kellawaies caſe, becauſe it was lawful to bꝛing an appeal, and ſo notwithſtanding the ſaid Statute no action did lie againſt him who bꝛought an appeal if it abated 9. H. 5. cap. 1. alſo the Statute of the 18. H. 6. pꝛovideth remedy foꝛ falſe appeals oꝛ judgement in another Countie malicioſe &c. by action of the caſe whereby it appeareth, that in ſuch caſe the Common Law allowed no action: alſo the Statute of the 18. H. 6. pꝛovideth another remedy then that Statute; and therefoꝛe no action lies againſt us no moꝛe then in the caſe afoꝛeſaid at the Common Law. Secondly, here is no iſſue joyned, if the Defendants be guiltie of the execution of this pꝛactice, but only if they be guiltie of the agreement, and this is found foꝛ the Plaintiff; but clearly ſuch agreement without execution giveth no cauſe of action, and the woꝛd Practizatione compꝛehends only the going about, and not the executing of this conſpiracy, and therefoꝛe the iſſue ſhould have been general if the Defendants be guiltie oꝛ not, and therefoꝛe he pꝛayed judgement might be ſtayed; and he cited Owen Woods caſe in Cook. lib. 4. Tanfield chief Baron, it is true, that the iſſue ſhould be better, if it were general not guiltie of the Treſpaſs afoꝛeſaid, but yet it is good enough in this caſe, foꝛ the ſpecial woꝛds compꝛehend aſmuch as the woꝛds not guiltie of the pꝛactice, and agreement afoꝛeſaid &c. and the woꝛd Practizatione compꝛehends aſwel the ſubſequent Acts of execution, as the pꝛecedent combination; and therefoꝛe Tantamounts a general iſſue, and it was good by the Court: and as to the action Altham Baron conceived that it lieth, although it be foꝛ a lawful cauſe, foꝛ the Law abhoꝛeth fraud, and conſpiracy, as if two conſpire to vex me foꝛ my land by ſuit, an action lieth F. N. B. yet it is lawful foꝛ every man to ſue me without title, and he vouched 16. Aſſiſe, and here it is ſaid, that the Defendants indeavoured to make the Plaintiff foꝛfeit his goods, which are woꝛth 5000. l. and this is reaſonable that it ſhould lie, and 9. E. 2. Fitz. diſcents 52. is our caſe directly upon the matter, and therefoꝛe it ſeemeth to me that it lies. Tanfield chief Baron ſaid, that 9. E. 2. croſſeth this caſe in part, and yet he thought that the action lies, to which Snig agreed, and it ſeemed the caſes of appeal put by Godfrey did lie well enough without aid of the Statute of W. 2. if there be ſuch a conſpiracy. Tanfield chief Baron accoꝛdingly, if it be legally thought without cauſe, yet if without conſpiracy the action lieth not foꝛ it, as it appears in Owen Woods caſe Cook lib. 4. and in all caſes, where ſtrangers have nothing to do with the ſuit bꝛought foꝛ the conſpiracy, and yet combine with the Plaintiff in the ſuit, an action upon the caſe lieth foꝛ this vexation, and judgement was entred foꝛ the Plaintiff by the Court.

An inquiſition foꝛ the King was returned here, and it was found that Fleetwood the Kings debtoꝛ, foꝛ his office of receiver foꝛ the Court of Wards did purchaſe a certain Term, and intereſt of, and in the rectory of Yeading foꝛ divers years then to come, and that being ſo poſſeſſed he became indebted to the King, and that this term is now in the hands of the Lady Edmonds, and by colour of this inquiſition the land is extended foꝛ the Kings debt. Harris Serjeant moved, that this inquiſition is inſufficient to extend the land, but good to ſell a term, and he

he vouched Palmers caſe Cook lib. 4. to which the Court inclined, but it was adjourned.

Paſch. 7. *Jac.* in the *Exchequer.*

If a Biſhop becomes indebted to the King for a ſubſidie, and dieth, his ſucceſſors ſhall not be charged upon the lands of the Biſhoprick, but the executors of the predeceſſor, or his heir, and if they have nothing the King ſhall loſe it, as chief Baron Tanfield ſaid, which the Court granted upon the motion of Bridgman, for the Biſhop of Saint Davids.

Trallops caſe.

A Scire facias iſſued againſt Trallop the father, and Trallop the ſon to ſhew cauſe, wherefore they did not pay to the King 1000*l.* for the mean profits of certain lands, holden by them from his Majeſty; for which land judgement was given for him in this Court, and the mean rates was found by inquiſition, which returned, that the ſaid mean profits came to 1000. l. upon which inquiſition this ſcire facias iſſued, whereupon the Sheriff returned Trallop the father dead; and Trallop the ſon now appeared, and pleaded that he took profits, but as a ſervant to his father, and by his commandment, and rendred an accompt to his father, for the ſaid profits, and alſo the judgement for the ſaid land was given againſt his father and him, for default of ſufficient pleading, and not for the truth of the fact; and he ſhewed the Statute of the 33 H. 8. cap. 39. which as he pretended aided him for his equitie, whereupon the King demurred. Hitchcock for Trallop, ſeemed that the Statute did aid him by equity, and he moved two things, the one, that if here be ſuch a debt, that the Statutes intends to aid it; the other, if the Defendant hath ſhewed ſufficient matter of equitie within the intent of the Act, and he thought, that it is ſuch a debt as the Statute will aid, for although that here be an uncertainty of the time of the judgement given for the King, that being reduced to a certainty by the inquiſition after, it ſhall be within the intent of the Statute, for id certum eſt quod certum reddi poteſt, and the words of the Statute are, if any judgement be given for any debt or duty &c. and here although that there was no certainty, unto how much theſe mean rates extended, at the time of the judgement given, yet it is clear, that it was a duty at the time of the judgement, and then it is within the Statute: alſo he ſaid, that the words in the proviſo of that Statute explain that the intent of the makers of the Act was ſo; for the words are for any thing for which the partie is chargable, and the mean rates are a thing, for which he is chargable: ſee Cook lib. 7. fo. 20. and the Lord Anderſons caſe there fo. 22. as to the point of equitie there ſeem to be two cauſes. Firſt, he ſhewed that he was but a ſervant to his father, and had given an accompt to him. Secondly, the judgement was given againſt him upon a point of miſpleading. Tanfield chief Baron ſaid, that the matter in equitie ought to be ſufficiently proved, and here is nothing but the allegation of the partie, and the demurrer of Mr. Attorney for the King, and if this be in Law an admittance of the allegation; and ſo a ſufficient proof within the Statute, it is to be adviſed upon, and for that point the caſe is but this, a ſcire facias iſſueth out of this Court, to have Execution of a recognizance which within this Act, ought by pretence and allegation of the Defendant to be diſcharged for matter in equitie, and the Defendant pleads his matter of equitie, and the King ſuppoſing this not to be equity within this Statute, demurreth in Law, whether that demurrer be a ſufficient proofe of the allegation within the Statute or not, and it was adjourned.

Trin. 7. *Jac.* in the *Exchequer.*

Doillie and *Foiliffs* caſe again Trin. 7. *Jac.* in the *Exchequer.*

CReſſey for the Plantiff ſaid, that the Plea in Bar is not good, becauſe the Defendant juſtified by force of a Capias ad ſatisfaciendum, and pleads no return thereof, and moved that it is not juſtifiable without returning of the writ, but the Court ſeemed the plea to be good, notwithſtanding that, but if it were a mean proceſs, then it ought to be pleaded to be returned: ſee Cook lib. 5. Hoes caſe fol. 19. according to this diverſitie, Tanfield chief Baron thought that the Plantiff ſhall recover; for firſt the writ of error here is not a writ, but a commiſſion, and therefore falſe latin ſhall not abate it, as it hath been adjudged in the Exchequer chamber, and in this caſe the ſcire facias ad audiendum errores, and all the writ, and this ſcire facias in our caſe, ought to have been made againſt the ſaid Julian, as againſt a married woman, and the writ of execution, which is the warrant to the Sheriff is not in ſuch words as the judgement in the Kings Bench is upon which it is founded, viz. that he ſhould take the aforeſaid Julian &c. but that he take the ſaid Julian Goddard, then the Sheriff ſhall not ſay in his defence, that all the proceeding in the writ of error was againſt the perſon, and aided himſelf by entrie in the roll of the Court, viz. quod prædict. Julianum capiat &c. but he ought to rely only upon the writ, and if in this caſe he would ſave himſelf, then he ſhould have inquired upon the delivery of the writ unto him by Lovies who was that Julian Goddard, and if thereupon Lovies had informed him, that it was Julian Doillie, then the Sheriff ſhould have an action upon the caſe againſt Lovies upon this falſe information, viz. if A. proſecute a replevin to replevy his Cattle, and thereupon he cauſe the Sheriff to deliver unto him the Cattle of B. for this here *B.* hath his remedy againſt the Sheriff, and the Sheriff againſt A. for this falſe information: alſo he ſaid, that if a fieri facias cometh to make execution of the goods of B. if the Sheriff take others goods in execution, a Treſpaſs lieth, and therefore to ſecure himſelf, he ought to impannel an inqueſt, to finde if they be the goods of B. or not, and then as he conceived it is good; but the opinion of the Judges in the Kings Bench, in Mich. 5. Jac. in Treſpaſs between Rookwood and Beal was to the contrary; for there a Treſpaſs was brought by Rookwood, and the Defendant juſtified the taking and ſo forth, as Sheriff by vertue of a fieri facias, as of the goods of Edward Rookwood father of the Plantiff, and upon the execution of this writ the Defendant impannelled a Jury, who found the goods to be the goods of the ſaid Edward Rookwook, for which &c. the Plantiff in the replication Traverſed, that they were his goods abſque hoc that the Jury found, that they were the goods of Edward Rookwood &c. whereby it ſeemeth that the finding of the Jury in this caſe is not material, and ſo the Court then conceived, therefore quære the opinion of Tanfield chief Baron in that point; and ſee the 17. *E.* 2. pl. 373. and 31. E. 3. Aſſiſe pla. 378. and 7. H. 4. fo. 27. Treſpaſs pla. 279. what acts a Sheriff may juſtifie by reaſon of a commandment and authoritie from the Court, which commanded him. Snig Baron ſeemed, that the action did lie, for the writ of capias ad ſatisfaciendum maketh no mention, that Julian Doillie is the ſame perſon againſt whom judgement was given in the Kings Bench, by the name of Julian Goddard, and although that the entrie in the Roll is againſt the ſaid Julian &c. yet the writ is directed, that he ſhould take Julian Goddard, and then the Sheriff had not done according to the writ in the taking of Julian Doillie, and he ſaid, that if A. binde himſelf by the name of I. and judgement is given againſt him, by the name of I. without appearing in perſon, and execution is granted againſt him by the name of I. in this caſe

case an action lies against the Sheriff, if he take the said A. in execution, for it appears not to him that it is the same person; but for the other cause, it seemeth that the Plaintiff shall not have judgement, for the Sheriff is no such person, who ought to be privileged here, and therefore the Plaintiff should have his remedy else where, and he said, that such a case hath been reversed in the Exchequer Chamber for error; for the under-Sheriff is but an Attorney for a partie privileged, that is for the Sheriff, but all the Clarks of the Court, and the other Barons were against him in that, and also all the presidents. Altham Baron had never heard it argued before, and therefore he respited his opinion till another day, at which day he said, that the arrest is not justifiable, and so for the matter an action well lieth, for by him the arrest ought to be in this case with a special recital, that whereas judgement was given and so forth; as in the 1. and 2. H. 6. if an Abbot hath judgement to recover, and after he is deposed, a scire facias lieth not against him as Abbot to reverse this judgement: and see 10. E. 4. a capias against A. the son of R. &c. see the 19. of H. 6. fo. 12. Summons against Iohn S. &c. see 18. H. 8. fo. 1. a replevin was brought in the Countie Palatine against A. widdow, and after she married D. and the plaint was removed into the Common Pleas mentioning her marriage &c. and so here the scire facias ought to mention all the special matter, and thereupon the writ of execution upon the reversal of the judgement, ought to be against Iulian Doillie, and not being so, the Sheriff is punishable &c. but it seemed to him, that in this action the wife ought to have joyned with her husband for the false imprisonment, or at the least, if the husband had brought the action alone, there ought to have been a special mention of the loss, which the husband particularly had sustained, as per quod consortium uxoris suæ amisit, or otherwise clearly it lieth not for the husband alone, and he resembled this case to the cases in the 9th. of E. 4. fo. 51, 22. Assise pla. 87. 46. E. 3. fo. 3. where husband and wife ought to joyn in an action, or at the least the declaration ought to be special as aforesaid, and so are the books of the 20. H. 7. and Kellaway to be intended; and for this cause he thought the Plaintiff shall not have jugement here. Tanfield chief Baron as I conceived said unto him, that the writ ought to have been with a special averment, but a surmise ought to have been made against Iulian Doillie as she now is, for as the writ is, the Sheriff may safely return, she is not to be found, and thereupon &c. quære, if he intended the writ of scire facias ad audiendum errores, or the writ of execution awarded upon the judgement in the Kings Bench, for he did not mention any particularity of the writ, but it seemeth, that he intended the writ of execution, and then the surmise whereof Tanfield spoke, ought to be made upon the roll of the judgement, given upon the writ of error, and Tanfield chief Baron said, as to the joyning in action, that clearly for a battery made upon the wife, the husband and wife ought to joyn in the action, as the books are cited before by Baron Altham; and so they ought to joyn in every action, to which the wife is intitled before marriage; but otherwise it is here, as he thought: and as to that which hath been said, that the declaration ought to have been special, viz. per quod consortium amisit uxoris suæ, it seems that shall be necessarily intended, without shewing of it in the declaration; but in the case put by Altham, if a man bring an action of false imprisonment of his servant, he need not shew whereby he lost his service &c. because peradventure he had no imployment for him, this is good Law by him, but otherwise it is in the case of a wife; but yet he would be advised thereof, as of a thing not mentioned before. Altham Baron, it may be intended, that the husband was also imprisoned with his wife, and so did not lose her company except it be shewed to the contrary, aswel as it may be intended the Master had no imployment for his servant, and after at the next Term Tanfield and Altham Barons agreed, that the Declaration ought to be special as Altham Baron conceived, or otherwise the wife ought to have joyned in the action, which had been better, for they said, that in all cases where the action is brought for such a

Trin. 7. *Jac.* in the *Exchequer.*

matter

Trin. 7. *Jac.* in the *Exchequer.*

matter for which the wife by poſſibility might have an action after the death of her husband, there they ought to joyn, and for this falſe impriſonment the wife may have an action after the death of her husband, and therefore they ought to joyn here. Snig and Bromley Barons, ſeemed prima facie, that the action lies well enough, when they joyn or when the husband alone bringeth it: and they vouched ——————and Doillies Councel ſaid, that they have heard it to be adjudged in the Kings Bench 28. Eliz. in one Cholmlies caſe, and 35. Eliz. in the Common Pleas, that an action lieth for the husband alone, for a battery made to his wife, and ſo they conceived it good; if they joyn or ſever in the action, and therefore it was appointed, that the next Term the preſidents ſhould be ſhewed, and the caſe to be argued as to this point. Note, that Doillie perceiving the Law againſt him for this laſt point or matter, becauſe his wife did not joyn, commenced his action of new in this Court, and this was in Treſpas for the beating and impriſoning his wife, and in this caſe the husband and wife joyned, and declared to the damage of the husband and wife, and the like Plea was pleaded in Bar as was in the other action, and the record thereof was read in Court Termino Paſch. 9. Iac. and then adjourned, and after, it was adjudged for the Plaintiff.

Wikes by Engliſh Bill in the *Exchequer* Chamber Trin. 7. *Jac.*

IN the Exchequer Chamber by Engliſh Bill this caſe was depending, and argued before all the Barons at Serjeants Inne in Fleetſtreet, viz. the King exhibited an Information againſt Wikes for entering into divers parcels of land, and Wikes pretending that he had good equitie prayed his relief by Engliſh Bill, in the Exchequer Chamber, and the caſe upon the ſaid Bill was this: Graunt made a leaſe for years to one Somerfield and Iohn Wintor in Truſt, and for the benefit of the wife and Children of the leſſor rendring rent, and after Wintor one of the Leſſees, and alſo Graunt who was the Leſſor, were attainted of the Gunpowder Treaſon, and Wikes married the wife of the Leſſor, and entred, and upon this information he prayed relief in behalf of his wife and Children by this Engliſh Bill: and firſt it was agreed by all the Barons, that the King by the courſe of the Common Law had the moitie of the land, and no more by the attainder of Wintor, and that Somerfield the other Leſſee, ſhall be Tenant in common with the King, but what remedy he ſhould have if the King took all the profits they agreed not. Secondly, they agreed by the admittance of Wikes his Councel, that the King as to the moity which came to him, ſhall not be ordered in equity to perform the truſt repoſed in Wintor, for the wife of the Leſſor, for the King cannot be ſeiſed to another mans uſe, no more can his eſtate be ſubject to any truſt at this day, as the Attorney general had ſaid clearly, which the Court granted: but Brock of Councel with Wikes ſeemed not to be ſatisfied, but that the King ought to execute ſuch truſt by equity; but Tanfield chief Baron ſaid, that before me at another day, you were content to be concluded, as to this point: that there is no equity againſt the King. Thirdly, it was debated, if in this caſe the King ſhould have the other moity, which was in Somerfield by equity, for clearly, if the leaſe had been made in truſt, for the benefit of the Leſſor himſelf, the King ſhould have it by his attainder, and then what difference, it being made for the benefit of the wife of the perſon attainted, for her husband might have diſpoſed of it, being a truſt only of a Chattel as he might have done of a Chattel, whereof the wife was poſſeſſed, and he might have wholly releaſed this truſt, and by conſiquence he might forfeit it by his attainder; whereunto Snig and Altham Barons agreed, and by Bromley his releaſe ſhall binde but during his life: the Attorney general ſaid, that he might releaſe all. Brock it ſhould be miſchievous

that

that his releaſe of this truſt, ſhould bar the wife of her truſt after her husbands death; for admit that a man make a leaſe to A. to the uſe of his wife for 100. years, if ſhe ſhall ſo long live, and this for a joynture for his wife, can her husband prejudice her of this joynture by releaſe of the truſt, as if he ſhould ſay no, and then a fortiori in the caſe here, for the truſt is for the wife and children, and the truſt for the children cannot be releaſed by the father, and conſequently not forfeited by him: by the Court there is no ſuch Bill depending before us, which demands any thing for the King, and the Bill which is here exhibited by Wikes prayes nothing but one moity of the term, viz. that which in Law belongs to Somerfield, which moity by the Common Law we cannot take from him, and therefore we will leave you to ſue in the office of Pleas, according to the courſe of the Common Law in the name of Somerfield; and therefore they gave no reſolution, if by equity the husband ſhall forfeit a truſt, which he had for years in the right of his wife. Trin. 7. *Jac.* in the *Exchequer.*

Sir Thomas Overburyes caſe was opened to be this, viz. Robert Wintor was ſeiſed in fee of ſix Bullaries at Wich, and he covenanted to levy a fine of all his Bullaries, and that for 4. of the ſaid Bullaries, this ſhould be to the uſe of John Wintor in tail, and for the other to the uſe of himſelf in fee with power of revocation, and after the ſaid Wintor levied a fine, ſur connizance de droit come, ceo, only of foure Bullaries, if this fine and the uſe of the eſtate paſſed thereby ſhall be directed by the covenant, it was the queſtion, and it was moved for a doubt, what Bullarie that ſhall be intended; whereof the fine is not levied by reaſon of the incertaintie; quære, and it was adjourned.

Nota, that an eſtreate of divers fines impoſed upon ſeveral indictments at the Quarter Seſſions, for ſeveral Riots was ſent into this Court, and the eſtreat here being mentioned not, for what offences the fines were impoſed, and the records of the indictments were in the Crown office by a Certiorari; and the chief Baron Tanfield ſaid, that the eſtreat was inſufficient, and we ought not to ſend out Proces upon them, becauſe they do not mention the quality of the offence, for which the fines were impoſed, and therefore it may be diſcharged by Plea, yet if the eſtreat be not warranted by the indictment, ſo that the indictment is diſcharged, for inſufficiency in the Kings Bench the Record thereof may be certified into the Chancery, and by mittimus transferred hither, and we may diſcharge the eſtreat: and Altham Baron agreed, that the partie grieved by ſuch fine, upon an inſufficient indictment may plead all this matter, and ſpare to remove the Record, and if the Kings Attorney will confeſs the plea to be true, it is as good as if the Record had been removed, which was not denied.

An Amercement for a by Law.

IT was moved for the King upon a leaſe holden for him, that I. S. was amerced 10. l. becauſe he received a poor man to be his Tenant, who was chargable to the parish contrary to a pain made by the Townſhip, and thereupon Proces iſſued out of this Court, and the Baily diſtrained, and I. *S.* brought Treſpas, and it was ſaid by the Barons, and ordered, that if I. S. will bring an action for the diſtraining, for this amercement be it lawfully impoſed, or not, yet I. S. ſhall be reſtrained to ſue in any other Court, but in this, and here he ſhall ſue in the office of Pleas, if he will, for the Bailiff levied it as an officer of this Court, and for the matter Snig ſaid, that if I. S. received a poor man into his houſe, againſt a by Law

Trin. 7. *Jac.* in the *Exchequer.*

Law made in the Townſhip, there is good cauſe of amercement; but by Tanfield it is nothing to us, that they have a cuſtome to make by-Lawes herein againſt a by Law made by us; alſo a leet of it ſelf, hath no authority to make by Lawes, or ſuch an order, but by cuſtome it is good. Snig and Altham Barons, it is good policy to make an order with a pain in a Leet, that no perſon ſhall receive any ſuch Tenant as ſhall be chargable to the pariſh; but clearly the Steward cannot amerce one, for ſuch a cauſe without an order with a pain made before.

Sir *John Littletons* caſe.

SIr Iohn Littletons caſe was, that all the lands of a Monaſtery were granted unto one Dudley reſerving 28. l. rent yearly for a Tenth of all the ſaid land according to the Statute, and after Dudley granted the greater part of this land to Littleton, and that he had uſed upon the agreement made between Dudley and him, to pay 20. l. yearly for the Tenth of his part, and Dudley had uſed to pay 8. l yearly for that which he retained, and after Dudley was attainted, whereupon his part of the ſaid land came to the King, and now the Auditor would impoſe the charge for all the Tenth, upon Littleton, but by the Court, although the Tenth was Originally chargable, and leviable upon all and every part of the land, yet it being apparant to them, that part thereof came to the Kings hands, it was ordered, that the land of Sir Iohn Littleton ſhould be diſcharged before the Auditor pro rata, and ſo it was, and Littleton to pay only 20. l. yearly.

Sweet and *Beal.*

NOta, that in Michaelmas Term 6. Iac. upon a ſpecial verdict, this caſe was depending in the Exchequer, viz. Anthony Brown deviſed a term to his wife, until the iſſue of the body of the Deviſor accompliſh the age of 18. years bringing up the ſaid child. Provided, that if the deviſor die without iſſue, that then the land ſhall go to the ſaid wife for term of her life, paying to the ſiſter of the Deviſor 6. l. 13. s. 4. d. yearly, which he willed to be paid, at two feaſts half yearly, and that if it be arrear, then it ſhall be lawful for the ſiſter to diſtrain, and to detain the diſtreſs until it be paid, and the Jury found, that the deviſor had iſſue at the time of his death, but that the ſaid iſſue died before he accompliſhed the age of 18. years, and they found alſo, that the rent of 6. l. 13. s. 4. d. payable to the ſiſter, was not paid at one day in which it was payable, and that no demand was made for it, and that Moil Beal who was the right heir, entred for the condition broken, and made a leaſe to the Plaintiff, who being outed by the wife, brought an Ejectione firme: and Chibborn of Lincolns Inne, argued that the entrie of the heir is lawful; firſt he ſaid, when he deviſed to his wife, until his heir come to the age of 18. years, bringing up the ſaid heir, if in this caſe the heir die within the ſaid age, the ſtate of the wife is determined, by reaſon that the education was the cauſe, the land ſhould continue to the wife, and the cauſe being determined by the death of the heir, before the ſaid age, therefore the eſtate is alſo determined, and upon that he vouched a caſe in Mich. 3. Iac. one Collins deviſed, that one Carpenter ſhould have the over-ſight, and managing of his land, until his ſon ſhould attain the age of 5. years, and the ſon died before he attained the ſaid age, and it was agreed, admitting, that Carpenter had by that deviſe an intereſt, that it is now determined by the death of the heir: to the ſecond matter, viz. when it is limited: that if the deviſor die without iſſue, that then the wife ſhall have it, by that it ſeems to me, that the wife ſhall not have an eſtate for life, by theſe words, as our caſe, for at the time of the death of the deviſor he had iſſue, ſo that it cannot be ſaid, that he died without iſſue, although now we may ſay, that he is dead without

without iſſue: but in regard, that the words of the will are not performed, according to the proper intendment of them, the Judges ought not to make another conſtruction, then according to the litteral ſence, the litteral conſtruction being properly the words to bear ſuch a meaning, and this, as he ſaid, may be proved by Wildes caſe in Cook lib. 6. but more ſtrong is our caſe, becauſe in a caſe which carrieth the land from the heir, there ought to be a ſtrong and ſtrict, and not a favourable conſtruction made to the prejudice of the heir, and therefore he vouched a caſe between Scockwood and Sear, where a man deviſed part of his land to his wife for life, and another part of his land, until Michaelmas next enſuing his death, and further by the ſaid will, he deviſed to his younger ſon all his lands not deviſed to his wife, and adjudged, that by the ſaid words the younger ſon ſhall have only that parcel which was deviſed to the wife for life, and not that which was deviſed unto her till Michaelmas: and yet by Popham it appeareth that his intent was otherwiſe, viz. that all that ſhould go to his younger ſon; ſo there ought not to be a ſtrained conſtruction made againſt the heir, and ſo in our caſe the words being, that if he die without iſſue &c. that then it ſhall go to his wife, herein as much as he had iſſue at the time of his death, it cannot be ſaid that he died without iſſue, but that he is dead without iſſue, and this appeareth by the pleading in the Lord Bartleys caſe in Plowden, and he vouched alſo a caſe in the Kings Bench 4. Jac. between Miller and Robinſon, where a man deviſed to Thomas his ſon, and if he die without iſſue having no ſon, there it was holden, that if the deviſee had iſſue a ſon, yet if he had none at the time of his death, the deviſee in the remainder ſhall have it, yet he was once a perſon having a ſon, and ſo in our caſe, there was a perſon who did not die without iſſue, and he vouched alſo the caſe of Bold and Mollineux in 28. H. 8. Dyer fo. 153. when a man deviſeth to his wife for life, paying a yearly rent to his ſiſter, and that if the rent be not paid, that the ſiſter may diſtrain, it ſeems to me, that this is a conditional eſtate in the wife, notwithſtanding the limitation of the diſtreſs, and he vouched 18. Eliz. in Dyer 348. which as he ſaid proved the caſe expreſſly, for there in ſuch a caſe it is adjudged, that the deviſee of the rent may after demand thereof diſtrain, and yet the heir may enter for the not payment of the rent, although it were never demanded, ſo that the ſubſequent words of diſtraining do not qualifie the force of the condition, although there be there an expreſs condition, and in our caſe but a condition implyed, and he ſaid, that it ſeemed reaſonable, that ſuch a conſtruction for the diſtreſs and condition alſo ſhall ſtand, as appeareth by divers caſes, that upon ſuch words, the Law will allow a double remedy, and therefore he vouched Gravenors caſe in the Common Pleas, Hill. 36. Eliz. Rot. 1322. where a leaſe was made by Magdalen College to husband and wife, ſo that if the husband alien that the leaſe ſhall be void, and provided that they do not make any under-tenants, and to this purpoſe he vouched the caſe of the Earl of Pembrook, cited in the Lord Cromwels caſe, Cook lib. 2. where the words amounted to a covenant and a condition, and if this word paying ſhould not be conſtrued to be a condition, then it were altogether void and idle, and ſuch a conſtruction ought not to be made in a will, and he conceived, that this rent ought to be paid by the wife, without any demand upon the pain of the condition, and therefore he vouched 22. H. 6. fo. 57. 14. E. 4 21. E. 4. by Huſſey and 18. Eliz. Dyer 348. vouched before, and ſo it was reſolved as he ſaid, in the Court of Wards in Somings caſe, where a man made a deviſe paying a rent to a ſtranger, this ought to be paid without demand, and he ſaid, that the Common caſe is proved, when a feofment is made upon condition that the feoffee ſhall do an act to a ſtranger, this ought to be done in convenient time without requeſt by the ſtranger; and ſo here it ſeemeth, although a demand ought to be made by the ſiſter, yet the wife ought to give notice to the ſiſter of the Legacy, ſo that ſhe may make a demand; and therefore he vouched Warder and Downings caſe, where a man deviſed, that his eldeſt ſon upon entry ſhould pay to the younger ſon ſuch a ſumme of money, here the elder brother ought to give

Trin. 7. *Jac.* in the *Exchequer.*

Trin. 7. *Jac.* in the *Exchequer.*

notice at what time he will enter, to the intent that the younger brother may be provided to make a demand. Edwards of the Inner Temple contrary. Firſt, it ſeemeth, that by this limitation the wife ought to retain the land until the iſſue of the deviſor ſhould have come to the age of 18. years, for this a time certain, and as it is conſtrued upon ſuch words in Boraſtons caſe, Cook lib. 3. that the Executors there have an intereſt certain, ſo it ſhould be conſtrued here, to refer to a certainty which is until the time by computation, that the iſſue ſhould have attained to 18. years, and the rather in this caſe, in reſpect the deviſor had otherwiſe diſpoſed of the land until the ſon ſhould have accompliſhed the ſaid age. Secondly, it ſeemeth, that the wife hath an eſtate for life, not conditional, in ſo much as the words are not joyned in the caſe, the 18. Eliz. Dyer hath been vouched: but that was upon an expreſs condition, but here it is by implication, and then the clauſe of diſtreſs taketh away the force of the implication, which otherwiſe might be thereupon inferred; and therefore in 5. Eliz. Dyer it appeareth, that the word Proviſo annexed to other words makes it no condition in judgement of Law, and ſo in 14. Eliz. Dyer 311. and he vouched alſo 18. Eliz. Dyer Greens caſe, that if a man deviſeth lands to his friends, paying to his wife with a clauſe of diſtreſs, this is no condition as it is adjudged. Thirdly, it ſeemeth, that this ſumme to be paid to the ſiſter is a rent, and therefore ought to be demanded, or otherwiſe in judgement of Law, the condition ſhall not be broken, and the 21. E. 4. the caſe of an obligation to perform covenants &c. and a caſe between Wentworth and Wentworth 37. Eliz. that a demand ought to be made for a rent, which is granted in lieu of Dower: for the wife brought a writ of Dower, for the land of her husband, the Tenant pleaded, that ſhe accepted a rent out of the land in lieu of her Dower, and the wife replied, that the ſaid rent was granted upon condition, that if it were not paid at certain dayes, that it ſhould be void, and that ſhe ſhould have Dower of the land, and ſhe ſaid, that the rent was not paid at the dayes &c. but ſhewed not in her pleading, any demand to be made, and therefore it was holden evil pleading, for ſuch a rent ought to be demanded, or otherwiſe the condition is not broken, and ſo here. Nota, that this caſe was appointed to be argued again, but after (as I heard) the Barons amongſt themſelves reſolved to give judgement for the Defendant upon one point only, which was, that the eſtate of the wife of the deviſor is not determined until the iſſue ſhould have come to the age of 18. years, and ſo none of the other points came now in queſtion, and judgement was given as above-ſaid.

Nota, that in Mich. 6. Jac. upon a motion made by Mr. Nicholas *Row* of the Inner Temple, it appeared that an inquiſition was returned in this Court, by force of a commiſſion, whereby it was found, that one A. was ſeiſed of the Manor of D. and ſo being ſeiſed of the ſaid A. was attainted of Treaſon in the Kings Bench, and of this ſhould be a double matter of Record to intitle the King, ſo that the owner of the land ſhall be forced to his Petition, it was the queſtion, and by the Court, in regard, that the record of the attainder is not in this Court, here is not in judgement of Law a double matter of Record, but if the attainder be removed into this Court, then that and the inquiſition would make a double matter of Record, and the Attorney general moved, that when an office findes the attainder, that the party ought to plead no ſuch record.

Worſelin Mannings caſe.

AN Information of intruſion was brought againſt Worſelin Manning and others, and upon the opening of the evidence at the Bar, it appeared that Worſely Manning was an alien born, and that he was made a denizen by the King,

King, and the Charter of Denization had this Proviſo uſual in ſuch Charters of Denization, that the Denizen ſhould do legal Homage, and that he ſhould be obedient, and obſerve the Lawes of this Realm, and after by vertue of a Commiſſion under the great Seal an office found, that the ſaid Worſelin after the Denization purchaſed the land in queſtion, and it was found alſo by the ſame office, that the ſaid Worſelin never did legal Homage, and that he was not obedient to all the Lawes of this Realm, and there was an offer of demurrer upon the evidence, if the Proviſo makes the Patent of Denization conditional, and ſo for the not performance thereof, the Charter of Denization ſhall be void: and Harris thought clearly, that this proviſo for the performance and obſervation of the Lawes doth not make the Patent conditional, but the intent only was, that if he do not obſerve them, then he ſhall forfeit the penalties therein appointed, to which the Court inclined, and after reſolved accordingly. Trin. 7. *Jac.* in the *Exchequer.*

At another day it was moved in Mr. Rowes caſe, that the poſſeſſion ſhall be awarded to the King, and in this caſe, Tanfield gave a Rule, that Mr. Row ought to plead to the inquiſition, but no poſſeſſion ſhould be taken from him, for although that the attainder make a double Record, yet if the indictment of Treaſon be taken before Juſtices of the peace more then a year after the Treaſon committed. as in this caſe it was, and the partie is outlawed upon this indictment, and the inquiſition findes this outlawry generally, yet this is no double matter of Record, for the outlawry is meerly void upon the ſaid indictment, becauſe the indictment it ſelf is void, and to prove that when an indictment is void, that is void as to all purpoſes; he vouched Vauxes caſe Cook lib. 4. fo 44. and 11. R. 2. and after in this caſe the Barons awarded proces to plead, but not to diſpoſſeſs the partie.

Vaux againſt *Auſtin* and others.

AN Information by Vaux againſt Auſtin and others, that they did ingroſs a 1000. quarters of Corn, upon not guiltie, the Jury found one of the Defendants guiltie for 700. and not guiltie for the reſidue, and found the others not guiltie for all. Prideaux moved that judgement may be given to acquit the Defendants in this caſe, and he vouched the 9th. of E. 3. fo. 1. and 14. E. 4. fo. 2. where an Information was brought for forgery, and proclaiming falſe deeds, and he was found not guiltie of the proclaiming, and 3. Eliz. Dyer 189. in the Lord Brayes caſe put by the way, and therefore he ſaid, that if there be an information upon the Statute of Uſury againſt two, and the Jury found the contract to be but with one of them, both ſhall be acquitted, and alſo he vouched Treports caſe in lib. 6. where a man declared of a leaſe made by two, where in Law it was only the leaſe of one, and the confirmation of the other, and therefore evil, 8 R. 2. tit. brief; and if judgement in this caſe ſhould be given againſt one being in a joynt information, he could not plead it in Bar of another information for the ſame thing, and then he ſhould be twice puniſhed for one fault. Hitchcock to the contrary, the Defendants plead, that they nor any of them are guiltie, and iſſue was joyned therepon, and by him this caſe is not to be reſembled, to the caſes which have been put of joynt contracts, for here the parties commit ſeveral wrongs, and he ſaid, if in a decies Tantum, againſt divers, if one be acquitted the other ſhall be condemned, and ſo in an action of Treſpas, 37. H. 6. fo. 37. touching maintenance, and if in Treſpas againſt two, one is found guiltie for one part, and the other found guilty for the other part, and 40. E. 3. fo. 35. and 7. H. 6 32. in treſpas the Defendant pleads that John S. infeoffed him and R. S. and the Plaintiff ſaith, that he did not infeoffe them, and the Jury found, that he infeoffed the Defendant, only in this caſe judgement ought to be given if either

Trin. 7. *Jac.* in the *Exchequer.*

of them be guiltie, and therefore there is a difference between that and Wainwrights case, for the information was, for the joynt buying of butter and Cheese, but here the information is for ingrossing by way of buying, and so he prayed, that judgement may be given for the King. Tanfield chief Baron, if upon the Statute of Champertie, a man declares upon a joynt demise by two, and it is found, that one only made the demise, it was adjudged good, and by him this proves the case in question, and the Barons agreed it to be clear, that if a contract be alledged to be made with one of them, no judgement for usury ought to be given, but in the principal case all but Tanfield agreed, that several judgements may be given, for it is like unto a Trespass, and accordingly judgement was given in the principal case, against him who was found guiltie.

Nota, by Tanfield chief Baron, and all the Court, that where the Statute of the 23. Eliz. appointeth, that if any will inform against A. Recusant, and the Recusant be thereupon convicted, that the informer shall have one moitie, and the King shall have another, yet if a recusant be convicted according to the form of the Statute of 28. Eliz. by indictment, an informer can never have any advantage upon an information exhibited after, for the Statute of the 28. Eliz. altereth the course of Law, which was upon 23. Eliz. and no informer can have any advantage upon a conviction of Recusancy by indictment, after the Statute of the 28. Eliz. according to this opinion, there was a judgement now lately in the Common Pleas, as the chief Baron Tanfield said, but if a Recusant be not convicted of Recusancy, an informer may have advantage against him, according to the Statute of the 23. Eliz. notwithstanding any thing in the Statute of the 28. Eliz.

Jacksons Case.

UPon a motion made by Sir John Jackson in a suit by English Bill, between Jackson and another; Tanfield said, that it had been decreed in the Chancery, betwixt one Gore and Wiglesworth, that if A. agree with me to lease black-Acre for certain years to me, and after before he makes my lease according to his promise, he infeoffes B. of that Acre for a valuable consideration, and B. had notice of this promise, before the feofment made unto him, now B. should be compelled in the Chancery to make this lease to me, according to the promise, and by reason of his notice, and so the Court agreed upon a motion made in the like case, by the said Jackson, for as before the Statute of 27. H. 8. a feoffee upon valuable consideration, should be compellable in the Chancery to Execute an use, whereof he had notice, so here.

Sir *Edward Dimocks* Case argued before.

BRomley the puisne Baron, thought judgement should be given for Sir Edward Dimock against the King, for the matter in Law he argued but three points. First, that the lease made to Queen Elizabeth in the year 26. is not good clearly without a matter of Record, for although that he agreed, that personal Chattels may be conveyed to the Queen without matter of Record, yet Chattels real can not, for they participate in divers qualities with inheritances and freeholds; and therefore if a man possest of a Term for years demiseth it to A. for life, the remainder over to B. that this is a good remainder, adjudged now lately in the Common Pleas, but otherwise it is of Chattels personal, as it appears by

37.

37. H. 6. the caſe of the deviſe of a Grail. Secondly, the acknowledgement of the leaſe before Commiſſioners, and the prayer of the Biſhop to have it inrolled, makes it not a record before inrolment, for it appears by the 21. H. 7. that if the Sheriff by vertue of a writ doth any thing, yet it is no matter of Record, until it be returned, and ſo is the 9th. of Ed. 4. fo. 96. that if the Philizer of a County enter Proceſs of outlawry in the room of a Philizer of another County, this is not a Record in judgement of Law, although that it be a thing recorded; and ſo he conceived, that it was no ſufficient Record in regard the Commiſſioners have not certified this recognizance, and the prayer of the Biſhop: Leſſor in the life of the Leſſee, and Leſſor whereby as he ſaid, he admitted, that if this were certified by the Commiſſioners in the life of the Leſſor and Leſſee, that then without inrolment this had been a ſufficient record to intitle the Queen, who was Leſſee. Thirdly, he argued that the inrolment ſubſequent in this caſe in time of the King that now is, maketh not the leaſe good, which was made to the Queen, for he thought that the interruptions hindred the operation of this leaſe (by interruptions) he meant the death of the Biſhop, Leſſor, and of the Queen Leſſee as it ſeemeth, and the leaſe in poſſeſſion of Sir Edward Dimock by force thereof without inrolment, and therefore he ſaid it was adjudged, if a man covenant to ſtand ſeiſed to the uſe of his wife which ſhall be, and there he makes a leaſe of the land, and then takes a wife, this leaſe by him is ſuch an interruption, that the uſe ſhall not ariſe to the wife, but in Wintors caſe in Banco Regis 4. Jac. and alſo in Ruſſels caſe, although it ſeemed to be there agreed, that the leaſe for years ſhould be good; yet it was not reſolved, but that the wife may have freehold well enough, by vertue of that Covenant, and he alſo vouched and agreed to Bret, and Rigdens caſe in Plowden Com. where the death of the deviſee, before that the deviſor died did fruſtrate the operation of the will, and ſo of the death of the Queen being Leſſee: alſo he vouched the Duke of Somerſets caſe 19. Eliz. Dyer 355. Firſt, as to the exceptions taken to the Bar, by the Attorney general which were two, it ſeemed to him that notwithſtanding them, the Bar is good, for whereas it was objected that the Bar is, that the Commiſſion and acknowledgement of the leaſe were not returned by Hamond and Porter, who were the two Commiſſioners who returned it, to that he anſwered, that the information mentions the acknowledgement, and the return before them two, and therefore there needeth no anſwer to more then is within the information, alſo it cannot be intended to be returned by the other two Commiſſioners, in regard that they were only to the conuizance. Secondly, as to the other exception, viz. that where the information ſaith, that May Biſhop of Carliſle by his certain writing of demiſe, had demiſed &c. for the Bar is, that the ſaid Biſhop made a certain writing purporting a demiſe, &c. that this ſhall not be intended the ſame writing mentioned in the information, and 6. E. b. Dyer 70. Iſhams caſe for Ilebrewers Park vouched in maintenance of this exception, and he ſaid, that it cannot be intended, but that the Bar intends the ſame demiſe mentioned in the information, for here the leaſe mentioned in the information, and the leaſe mentined in the Bar, agree in eight ſeveral circumſtances, as it was obſerved by the Councel of Sir Edward Dimock; ſee the argument of Bandrip, and 1. H. 6. fo. 6. where a ſcire facias was brought againſt I. S. the Sheriff returned, that according as the writ required, he had made known to I. S. and doth not ſay, the within named I. S. Altham Baron accordingly: as to the matters in Law, there are five points to be conſidered in the caſe. Firſt, he ſaid, that the making of the leaſe to the Queen without acknowledgement is not good, nor matter ſufficient to intitle the Queen, and he vouched 5. E. 4. fo. 7. and 7. E. 4. fo. 16. 4. H. 7. fo. 16. 21. H. 7. fo. 18. 1. H. 7. 17. and 3. H. 7. 3. the ſame Law when a wardſhip is granted; and ſo an uſe cannot be granted to the King, without matter of Record 6. E. 6. Dyer 74. that the Kings Leſſee for years cannot ſurrender without matter of Record. Secondly, it ſeemeth that the confirmation of the Dean and Chapter is good, notwithſtand-

Trin. 7. *Jac.* in the *Exchequer.*

ing

Trin. 7. *Jac.* in the *Exche-quer.*

ing it wanteth inrolment, and notwithſtanding the confirmation made before the inrolment, and ſo before the being of the leaſe, for here is only an aſſent of the Dean and Chapter, for the Biſhop hath his land in right of his Biſhoprick, and an aſſent may be aſwel before the leaſe as after, inſomuch no intereſt paſſeth: ſo alſo may an attornement be good, before a grant of the reverſion, but otherwiſe it ſhould be, if an expreſs confirmation was requiſite in the caſe, for then it had not been good, and this difference is, where the parties who confirm have an intereſt, and where they have only an aſſenting power, and this is well proved by 29. H. 8. Dyer 40. the Dean of Sarums caſe, and by Cook lib. 5. 81. and 33. H. 8. tit. confirmation. Thirdly, it ſeemeth, that the bare returning of the Commiſſion without an expreſs inrolment, is no ſufficient matter of Record to intitle the King to the leaſe, for it is without inrolment, no more but an acknowledgement, and the Deed ought to be of Record to paſs the eſtate 7. *E.* 4. fo. 16. but he agreed, that if the Commiſſioners return an acknowledgement of a debt, this is ſufficient to make a debt upon Record, 2. H. 7. 10. but if Commiſſioners by a dedimus poteſtatem, to take Conizance of a fine, receive the Conizance of the fine, and return it, yet it is not a fine, until the final Concord be recorded. Cook lib. 5. Tayes caſe, and ſo here, it is no record until the inrolment. Fourthly, in regard there is no inrolment in the life of the Biſhop, and ſo no perfect leaſe in his life, this can never be good, for this circumſtance of inrolment, is as requiſite to the eſſence, as the attornament is to the grant of a reverſion, and is cauſa ſine qua non, for the ſucceſſor of the Biſhop comes in paramount the Leſſor, as the iſſue in tail comes in, partly by form of the guift, and this is proved by the writ of de ingreſſu ſine aſſenſu Capituli in the Regiſter, and therefore if the Biſhop make a leaſe and dieth, this leaſe cannot be affirmed after his death, by the Chapter 33. E. 3. entry Congeable 79. 11. H. 7. and yet a leaſe made by the Biſhop is not altogether void by his death, as it appears in Cook lib. 3. in Pennants caſe, and he compared this caſe to the caſe of Smith and Fuller in Plowden, where if a leaſe be made for ſo many years, as A. ſhall name, the years ought to be named certainly in the life of the Leſſor, for otherwiſe it is not good clearly, and ſo here the Leſſee ought to come in by the Biſhop, who was Leſſor, or otherwiſe this is no good leaſe, and it cannot be ſo in our caſe, becauſe it wanteth inrolment, to make it a leaſe in the life of the Biſhop. Fifthly, he ſaid the inrolment after the death of the Leſſor, ſhall not have relation to make the leaſe good, for the Queen takes nothing until the inrolment made, and therefore all is but words until the inrolment, and it differeth much from the caſe of a bargain and ſale, for in ſuch caſe an uſe paſſeth at the Common Law before any inrolment, and this may relate well enough if the Deed be inrolled after within 6. moneths, for the Statute of the 27. H. 8 of inrolments, doth not hinder the relation, for the words are, that nothing ſhall paſs by the bargain (except the Deed be inrolled &c.) ſo that if the Deed be inrolled in due time, it paſſeth from the beginning well enough, but otherwiſe it is in our caſe, ſee the 12. H. 4. fo. 12. ſo a fine cannot relate but from the recording thereof, for nothing paſſeth, but by the Record, and it doth not relate as a bargain and ſale &c. and as to the exceptions taken to the Bar, he ſaid, that notwithſtanding them the plea is good, for it ſhall be intended the ſame writing which the information mentions, and it is not like to Mary Dickenſons caſe, Cook lib. 4. fo. 18. where the Plaintiff alledged, that the Defendant publiſhed a forged writing, in diſcredit of the Plaintiffs title, and the Defendant ſaid, quod talis Indentura qualis &c. this doth not anſwer the Declaration, for no like is the ſame, but in our caſe the Bar cannot be better, for the information is, that by writing he demiſed &c. and the Bar is, that well and true it is, that the Biſhop by his certain writing made purporting a demiſe, which he pretended to be no demiſe in fact, and if he ſhould ſay in expreſs words, as the information ought to be, then he ſhould confeſs the thing which is matter in law, and ought not to take a Traverſe to the demiſe alledged, becauſe it is a matter in Law, if it be a demiſe

or

Trin. 7. *Jac.* in the *Exchequer.*

or not: to the ſecond exception he ſaid, that he needs but to anſwer the expreſs ſurmiſe of the information which is, that two Commiſſioners &c. and the Bar is expreſly, that they did not &c. without ſpeaking any thing that the other Commiſſioners did do any thing, as if an action of accompt be brought, and the Plaintiff ſaith, that the Defendant accompted before A. it is a good plea, that the Defendant did not accompt before A. for though peradventure he accompted before another, but this ſhall not be intended, ſo the Bar is good. He accepted to the information. First, it doth not mention within what time the firſt leaſe was inrolled, for the words are, modo irrotulat. Secondly, the information ſaith not that the deed of confirmation was ever ſealed, but that the Chapter with their ſeal &c. and ſaith not ſealed, and then it is not good, wherefore upon all the matter it ſeemeth, that judgement ought to be given againſt the King. Snig Baron, that the Bar is good, and alſo the information, firſt it ſeemeth, that here is no Record to intitle the King to this land by the leaſe from the Biſhop, for if this deed, which purporteth a leaſe made by the Biſhop, were found by inquiſition to be acknowledged, yet it is no ſufficient Record 7. E. 4. and 5. E. 4. for the title of the King, ought to be by the Record, immediately from the party who makes the eſtate, and Mr. Stamford is to be conſidered, that if the King hath an antient right, he may peradventure be in actual poſſeſſion without Record, but if he cometh in as a purchaſer; he ſhall not have without a Record, and this is proved by the caſe of the Duke of Somerſet in 19. Eliz. Dyer, and Mackwilliams caſe in 3. Eliz. and he ſaid, that as to the relation, if a man ſeiſed of a Mannor bargaineth it to me, and rent incurreth before the inrolment I ſhall not have the rent, although the Deed be inrolled within 6. moneths after, and ſo of a condition, and if a reverſion be granted, and before attornment of the Tenant the rent incurreth, the grantee ſhall not have the rent notwithſtanding any relation: as to the point of confirmation, he vouched the caſe of Patrick Arch-Biſhop of Dublin in Ireland cited in Dyer, alſo he vouched Dyer fo. 105. and by theſe books it ſeemed, that in this caſe a confirmation is required to be made, and a bare aſſent is not ſufficient, and therefore if an incumbent make a leaſe for years, and the Patron grants the next avoidance, and after confirms the leaſe, here the leaſe is not good in reſpect the next avoidance interrupts it for his life, but after the death &c. the term will be good, as it was here lately adjudged, and ſo he thought, that in this caſe the confirmation is not good, and alſo that the Commiſſion not being returned, is not good, and after one of the Commiſſioners die, before the return, it cannot be returned, and by the inrolment here made the leaſe cannot take his effect with any relation, and ſo he concluded, that judgement ought to be given againſt the King. Tanfield chief Baron, the Commiſſion for the acceptance of the acknowledgement of the Biſhop, touching that it is to be known, whether this makes it the Deed of the Biſhop, and that the Commiſſioners ſhould return &c. the confirmation in this caſe, was made in the life of the Biſhop Leſſor, and of the Queen Leſſee, although that ſome of my brethren conceive the Record to be otherwiſe, alſo in this caſe Dimock entred by vertue of his leaſe, before the inrolment of the leaſe made to the Queen, as the Record purporteth: to the points, First, I conceive that nothing reſteth in the Queen without inrolment, but if Leſſee for years be outlawed, the King ſhall have this leaſe by the outlawry, for the outlawry is intended to be upon Record, but of a wardſhip for land, that is not in the Queen, by the death of the Queens Tenant without an office, becauſe there is no matter of Record, if an Alien hath a leaſe of land this is forfeited, yet he ſhall have perſonal Chattels, and as to the Book of 18. E. 3. cited on the other ſide, where the King brought a quare impedit &c. this may be well agreed, for the Prior of Durham confeſſed by Record, that he had made a grant, and this is a ſufficient Record, and as to the book of 20. E. 4. where the Patron was outlawed, and before the outlawry the Church became void; that the King ſhall preſent, it may be well agreed, although that no office be found, for this preſentation is but a

thing

Trin. 7. *Jac.* in the *Exche-quer.*

thing perſonal, and tranſitory, and therefore thoſe Books prove nothing in this caſe. Secondly, he ſaid, that when this leaſe was acknowledged before Commiſſioners, yet that was not ſufficient to make a record to intitle the King, and it is here expreſly denied in the Bar, that this leaſe was certified into the Chancery in the life of the Queen, and therefore he thought, that here was no Record to intitle the Queen, and to this purpoſe he cited a caſe in 19. Eliz. Robins and Greſhams caſe, if a Recognizance were acknowledged before a Maſter of the Chancery and not inrolled, this is no Record, and an Action of debt lieth not thereupon, and the 34. Eliz. in Brock and Bainhams caſe in this Court, a Recognizance was taken before a Baron of this Court, yet this was no Record without inrolment, and therefore the bare acknowledgement in our caſe is no Record: alſo he denied the opinion of Davers in 37. H. 6. to be Law, but only for perſonal Chattels, and the 12. Eliz. Brook and Latimers caſe was adjudged againſt the opinion of Davers for land, or leaſes. Thirdly, he ſaid, that the ſucceſſor of the Biſhop comes in paramount the leaſe made to the Queen, and the new Leſſee entring before any inrolment, hath made the ſucceſſor of the Biſhop as in his remitter, and when an antient right comes, this prevents the relation, which otherwiſe might be by the inrolment, and he ſaid, that the firſt leaſe here made to the Queen is meerly dead, until inrolment, and he vouched the 11. E. 4. fo. 1. Vaſtons caſe, the diſcontinuor enters upon the diſcontinuee, after the diſcontinuee dieth his heir within age, the diſcontinuor dieth, this cauſeth a remitter, and ſo by him, if the diſſeiſſee enter upon the heir of the diſſeiſſor, being an infant and dieth, this avoids the deſcent by reaſon of the antient right which the diſſeiſſee had, and by 7. H. 7. and 11. H. 7. Eriches caſe, it appears that an Act of Parliament will not revive a thing that is meerly dead, by reaſon of any inrolment, and much more here, an inrolment cannot revive this leaſe which is meerly void by the death of the Leſſor, and the entrance of the Leſſee of the Biſhops ſucceſſor, and there is a great difference betwixt the inrolment in this caſe, and the inrolment of a bargain and ſale, in regard that the ſale is dead before the inrolment, and yet in the caſe of bargain and ſale, it was adjudged in the Common Pleas Paſch. 2. Jac. in Sir Thomas Lees caſe called Bellinghams caſe, that if a man bargain land to A. and before inrolment of the Deed A. bargaines the land to B. which ſecond bargain is inrolled, this inrolment makes not the bargain good to B. for the relation of the firſt, is only to perfect and make good the conveyance to A. from all incumbrances after his bargain, but not to make the ſecond Deed good which was void before: alſo in 36. Eliz. in Sir Thomas Smiths caſe, if the Bargainee ſuffer a recovery before the Deed inrolled, yet that doth not make the recovery good, and he ſaid, that in this caſe, until an inrolment of the leaſe made to the Queen there is no Leſſee, and a leaſe cannot be without a Leſſor and Leſſee, and before an inrolment of the leaſe, the Leſſor is dead, ſo that there never was a Leſſor and Leſſee in life together and therefore the inception of this leaſe was altogether imperfect before the conſummation came, and ſo it ſeemeth by him, that the death of the Biſhop Leſſor intervening before the inrolment is the principal cauſe, that the firſt leaſe is not good: as to the 4th. point of confirmation, it ſeems to me, in regard that the Biſhop was ſeiſed in right of his Biſhoprick, and the Dean and Chapter have no intereſt in the land, ſo that an aſſent is only ſufficient in this caſe, it ſeems to me, that the confirmation (as you call it) is good enough, for it is clear, that an aſſent may be aſwell before the leaſe as after, for it paſſeth no intereſt no more then an Attornment. Cook lib. 5. Foords caſe proveth this diverſity plainly, and by the ſame reaſon, alſo it ſeems to me, that this aſſent of parties who have no intereſt is good enough without inrolment, but otherwiſe it ſhould be, if a confirmation were required in the caſe: and as to the pleading, I think the Bar is good; and as to the exceptions which have been made, viz. if the leaſe ſuppoſed to be made to the Queen be anſwered, and he ſaid, it was good enough, for the purpoſe of the Defendant is to bring the matter

matter in Law before the Judges, and the matter in Law is, if it were any leaſe or not, as the information ſuppoſeth, and therefore the Defendant ought not to agree with the information for the matter in Law, and therefore he had done well to ſhew the ſpecial matter as he had done, and not to confeſs it as it is in the information, nor to traverſe the ſaid demiſe, becauſe it is matter in Law: 5. H. 7. and Vernons caſe Cook lib. 4. he needs not traverſe abſque hoc, that the leaſe was made for and in ſatisfaction of Dower, and to ſhew the ſpecial matter, viz. that it was a conditional leaſe, and ſo leave it to the Judges for the matter in Law if it be a joynture or not: alſo it ſeemeth to me, that it is ſufficient for the Bar to ſay, that the Commiſſion was not returned by Hammond and Porter, for that is a Traverſe to the information, and it cannot be intended to be returned by any other of the Commiſſioners, in regard that thoſe two only did execute it for the taking of the acknowledgement as the information mentions, but he ſaid nothing in this caſe, if this Commiſſion may be returned by thoſe Commiſſioners who took not the acknowledgement: alſo by him and Snig (Bromley abſent) ſigillo ſuo ratificat. is good enough without ſaying ſigillo ſuo ſigillat. contrary to Baron Altham: alſo the Defendants have ſhewed the time in their Bar, when the firſt leaſe was inrolled, ſo that it is certain; but it ſeems to me, that admit the matter in Law was for the King, yet upon this information we cannot give judgement for him, for the information is for the mean profits incurred before the inrolment, and this is clear that the King cannot have them without doubt, (admit that the Biſhop had been living) yet the inrolment cannot relate as to the mean profits, although it ſhould be admitted to be good to make the leaſe good at the time of the inrolment, and ſo upon all the matter be agreed, that judgement ought to be given againſt the King, and ſo it was. Trin. 7. *Jac.* in the *Exchequer.*

Tanfield chief Baron ſaid, that if a man take a leaſe of my land from the King by Patent rendring rent, this is not an Indenture to compel him to pay the rent, for the King had nothing to grant, whereupon a rent might be reſerved to him. Altham Baron ſaid, that the King ſhall have the rent here, as by eſtoppel between common perſons; but it was adjourned.

It was ſaid by Tanfield chief Baron, that a Collector of a fifteenth may levie all the Tax within one Townſhip, upon the goods of one inhabitant only if he will, and that inhabitant ſhall have aid of the Court to make each other inhabitant to be contributory; which was granted by the Court. Bromley being abſent.

Tanfield chief Baron ſaid, that if a man had judgement againſt A. upon an Obligation, who dieth, and another Obligee of the ſaid A. aſſignes his Obligation to the King, the Executors of A. ſatisfie the ſaid judgement, it is good againſt the King, in reſpect the debt now due to the King, was not upon Record before the death of the Teſtator, which was granted by the Court.

Leviſon againſt *Kirk.*

This Term the caſe between Leviſon and Kirk, which was opened the laſt Term was adjudged: and the caſe was, that Leviſon brought an Action upon the caſe in the office of Pleas againſt Kirk, and declared, that whereas the Plantiff was a Merchant, and 13. Martii 40. Eliz. intended to go beyond the Seas to M. to Merchandiſe, and the ſame day and year at D. he acquainted the Defendant with his determination, and then in the ſame place appointed and truſted the Defendant being his ſervant, to receive for him all ſuch Merchandiſe and goods, which ſhould be ſent over, or carried, or conveyed by the Plantiff in the ſame voyage, and to pay for the cuſtome of them, and to diſpoſe of them,

Trin. 7. *Jac.* in the *Exchequer.*

and convert them for the profit and commoditie of the ſaid Plaintiff, and thereupon conveyed divers goods to the Defendant, and that the ſame day and yeat the Plaintiff took ſhipping, and ſailed to M. and that within five dayes following 20. pieces of Velvet were brought into the Port of S. conſigned by the Plaintiff to the Defendant in the abſence of the Plaintiff, and that the Defendant on purpoſe to deceive the Queen of her cuſtome, and to make the Plaintiff to allow cuſtome unto him, did take of the ſaid goods ſo conſigned, and land them on the land at S. aforeſaid the cuſtome not paid, whereby the Plaintiff loſt his goods, as forfeited for default of payment of cuſtome to the damage of &c. and upon not guiltie pleaded, a venire facias was awarded to the the Sheriff, that he ſhould cauſe to come 12. from the Venue of D. and thoſe &c. viz. from the place where the truſt was repoſed, and from the place where the truſt was broken, and thereupon the Defendant was found guiltie, and damages 50. l. and in Paſch. Chibborn Serjeant moved in arreſt of judgement, that the Action did not lie for every fault againſt the ſervant, although it be ſuch a miſfeazance, for which the Plaintiff receives prejudice, and therefore if you will have an Action in this caſe, you ought to ſhew a ſpecial truſt repoſed, and a breach of that truſt by the ſervant, or otherwiſe an Action upon the caſe lieth not, and that is not obſerved here, for although that you ſhew, that the Defendant being your ſervant, was appointed and truſted for the goods, to be conſigned in the ſaid voyage, yet you did not ſhew that theſe goods were not conſigned in the ſaid voyage, neither do you ſhew, that he was ſuch a ſervant generally uſed to be imployed in trading for your goods, neither do you ſhew, that you have allowed or delivered moneys to him, to make him able to pay the cuſtome, and to ſay, that by the ſale of the goods themſelves, he may pay it himſelf, and you appointed him to diſpoſe them at his pleaſure, yet hereby you do not inable him thereunto, for he ought to pay the cuſtome before he ſell them, and then peradventure he had not money to diſcharge the cuſtome, wherefore there is no cauſe of your Action, as this Declaration is; and therefore he prayed that judgement may be ſtaied. George Crook prayed, that judgement may be given, for although it b not expreſſly ſhewed, that the Plaintiff continued beyond the Seas, in the ſaid voyage, at the time of the coming of the goods to the ſaid Port, yet the intendment ought to be ſo of neceſſitie, in regard it is ſhewed, that within five dayes after his departure, and in his abſence theſe goods were conſigned &c. and his return cannot be intended in ſo ſmal a time, and he vouched 21. E. 4. fo. 13. alſo it is not material in the caſe to ſhew, that the Maſter hath left where withal to pay the cuſtome, for here the Action is brought in reſpect of deceipt, and fraud in the Defendant, and this is inferred divers wayes: the firſt, that the Defendant ought to receive my goods. Secondly, that he ſhould pay the cuſtome. Thirdly, that he ſhould diſpoſe of them at his pleaſure, for the profit and comoditie of his Maſter the Plaintiff, and it is ſhewed, that he intended to deceive his Maſter and the Queen alſo, and where a wrong is made to another in my name whereby I am damnified, there I ſhall have an Action, and if in this caſe, the Defendant had left the goods in the ſhip, then the Plaintiff had ſuffered no loſs, and therefore his taking them out of the ſhip is the cauſe, which occaſions the loſs to the Plaintiff, and therefore it is reaſonable, that he ſhould render us damages, and he vouched the writ of deceipt in F. N. B. and divers caſes therein put, and 21. E. 4. that if a man bring an Action in London, and the Defendant to delay my Action brings a writ of priviledge, he ſhall have an Action upon the caſe, and he vouched the like caſe to be adjudged in the Kings Bench 40. Eliz. between Byron and Sleith upon an Action of the caſe brought by the Defendant, becauſe he ſued a ſcire facias againſt a Bail in a Court where he ought. Bromley Puiſne Baron ſaid, that the Plaintiff ſhall have judgement. Firſt, it ſhall be intended, that the Plaintiff was beyond the Seas, at the time in reſpect of the Minute of time, between his departure and the landing of the goods. Secondly, he ſaid, that it needs not be expreſſed, that the Maſter had left moneys wherewith to diſcharge

the

the cuſtome, for it ſhall be intended in this caſe, becauſe the Defendant had taken upon him to meddle according to the appointment of the Plantiff, wherefore &c. and ſo be departed to the Parliament. Altham ſecond Baron agreed, that the Statute for the paying of cuſtome appointeth, that if the goods of any man be laid upon the land the cuſtome not paid, that then the goods ſhall be forfeited, and therefore here he ſhall not loſe his goods, by reaſon of this Act made by the Defendant, ſo that if the Defendant be a meer ſtranger to the Plantiff, without queſtion an Action of Treſpaſs lies for this taking; then in the principal caſe, by reaſon of this truſt an action of the caſe lies, and if a ſtranger drives my Cattle upon your land, whereby they are diſtrained by you, I ſhall recover againſt the ſtranger for this diſtreſs by you, in an action againſt him, for by reaſon of this wrongful Act done by him I ſuffer this loſs, and he vouched 9. E. 4. fo. 4. a caſe put by Jenney. Snig third Baron to the contrary, I agree that if a ſtranger put in my Cattle to the intent to do hurt to me, a Treſpaſs lieth, but here is an Action upon the caſe and that lies not, becauſe it appears not ſufficiently, that the Defendant was ſervant to the Plantiff to Merchandiſe, but generally his ſervant, and therefore an Action of Treſpas rather lieth generally, for in an Action upon the caſe, he ought to hit the bird in the eye, and here it is not ſhewed, that the goods were for the ſame voyage, nor that the Defendant is a Common ſervant in this imployment: alſo the Declaration is not good, becauſe he doth not ſhew, that the Defendant had moneys, or means from the Maſter to pay the cuſtome, and he is not compellable to lay out money of his own, beſides he cannot diſpoſe of the goods, until the cuſtome be paid, wherefore &c. Tanfield chief Baron, there are two matters to be conſidered in the caſe. Firſt, if here you charge the Defendant as your ſpecial ſervant, or if as a ſtranger. Secondly, if as a ſtranger, then if an Action upon the caſe, or a general Action of Treſpaſs lieth; and as to the firſt, if in this caſe you have ſhewed him to be ſuch a ſervant as a Bayliff, or Steward, and he hath miſbehaved himſelf in ſuch a thing which belongs to his charge, without any ſpecial truſt, an Action upon the caſe lieth, but if he be taken to be your general ſervant, then he is to do and execute all Acts and lawful commands, and againſt this general ſervant, if his Maſter command him to do ſuch a thing, and he doth it not, an action upon the caſe lieth, but yet this is with this diverſitie, viz. if the Maſter command him to do ſuch a thing, which is in his convenient power, or otherwiſe not, and therefore if I command my ſervant to pay 100. l. at York, and give him not money to hire a horſe, an Action lieth not for the not doing of this command but if I furniſh him with ability to do it, and then he doth it not, an action lieth well againſt him, and in the principal caſe it is ſhewed, that the Plantiff appointed the Defendant being his ſervant generally to receive &c. and to pay all cuſtomes &c. then it is examinable, if the Plantiff ſufficiently inabled this Defendant to do this command, and the words of the command ſeem to be all one, as if he had commanded the Defendant to receive the Wares, paying the cuſtome, and therefore the Defendant needs not to receive them, if he had not money to pay for the cuſtome, and ſo it is not within the Plantiffs command to receive the Wares, and then if he doth receive them not paying for the cuſtomes, this is another thing then the command, and therefore it is no miſfeazance as my particular ſervant, but being my general ſervant, he had done another thing then I commanded him, whereby I receive ſome damage, and by conſequence is in caſe of a ſtranger, for if my general ſervant, who is not my horſe keeper, take my horſe out of my paſture and ride him, this is a thing which he doth not as a ſervant, but as a ſtranger: then as to the ſecond matter, the Defendant being as a ſtranger, if an action upon the caſe, or a general action of Treſpaſs lieth, for this is, as if my general ſervant take my horſe, and rides him without my appointment, a general action of Treſpaſs lieth, but if by reaſon of his riding my horſe die, an action upon the caſe lieth, and ſo it is in the caſe here, the Defendant has laid the goods upon the land, by reaſon whereof they were forfeited, it is collourable,

Trin. 7. *Jac.* in the *Exchequer.*

Trin. 7. *Jac.* in the *Exchequer.*

that an Action upon the caſe lieth, but if a man take my goods, and lay them upon the land of A. a Treſpaſs, or an Action upon the caſe lieth againſt him, who took them by the better opinion; but it is good to be adviſed, and it was adjourned; and at another day Altham Baron ſaid, that an Action upon the caſe, or a Treſpaſs generally did lie well enough, and he vouched F. N. B. that if a Bailiff arreſt one without any warrant, I ſhall have Treſpaſs generally, or an Action upon the caſe at my election, and ſo in the like caſe 18. *E.* 4. fo. 23. Treſpaſs, or Action upon the caſe lies alſo: by F. N. B. if Executors be outed by the Teſtators Leſſor, there they may have an Action upon the caſe, if they will, or Treſpaſs generally, and in Slade and Morleys caſe, a caſe was put, which proves it to be according. Snig Baron agreed, that Judgement ought to be given for the Plaintiff, and by Tanfield, if I take your goods, and detain them, until I have cauſed you to pay me 10. l. a general Action of Treſpaſs lieth, and not an Action upon the caſe, and it is cited 7. H. 4. or 7. E. 4. to be accordingly: but yet he agreed, that judgement ſhould be entred, and ſo it was appointed to be done; but then Chibborn for the Defendant ſaid, that here is a miſtrial, for if this truſt be not material, becauſe it is not effectually ſhewed in the Declaration as you have argued, then the Venue ſhall come only from the pariſh, where the Wares were laid upon the land, and not from the pariſh alſo, where the appointment or truſt was made by the Plaintiff, and therefore the trial alſo being from both pariſhes, is a miſtrial, and the Court agreed, that this is a miſtrial upon that reaſon, for now the appointment or Truſt is but an inducement, and therefore needs not to be ſhewed within what pariſh it was made, and therefore a new Venire facias was granted, and upon that a new trial, and damages more then before, and judgement was given accordingly.

Arden againſt *Darcie.*

NOta, a good caſe of Attornament, which was decreed in the time of Baron Manwood betwixt Arden and Darcie, and it was this; one Arden was ſeiſed in fee of divers lands in the County of &c. and made a leaſe for years, and after made a feoffment with words of Grant of thoſe lands to A. and B. to the uſe of the feoffor, and his wife for their lives, the remainder to Arden his ſon in tail, and after the feoffor ſaid to the Leſſee, that he had conveyed his land, which the Leſſee held in leaſe to the uſes aforeſaid, and the Leſſee ſaid, I like it well, and after he paid his rent to the feoffor generally, and it was decreed in the Exchequer Chamber, that this is no Attornament, becauſe the Attornament ought tobe to the feoffees, and it appeareth not, that the Leſſee had notice of the names of the feoffees, and therefore it cannot be ſaid, to amount to an Attornament, but notwithſtanding that Decree, Arden the ſame to whom the remainder was limited, had his Action depending in the Kings Bench to trie the point again, as he ſaid to me: alſo this Term, a point concerning the ſaid Decree was in queſtion, upon another Bill exhibited in the Exchequer Chamber by Sir Edward Darcie againſt Arden, and the caſe was as followeth. Sir Edward Darcie exhibited his Bill here in the nature of a ſcire facias againſt Arden, to ſhew cauſe, wherefore the ſaid Edward Darcie ſhould not have execution of a Decree made, in the time of Baron Manwood, and the Defendant ſhewed, that Darcie in his firſt ſuit ſuppoſed by his Bill, that he had a grant of the land then, and now in queſtion from Queen Elizabeth rendring rent, as it appears by the letters Patents, and in facto there was no rent reſerved upon the Patent, and that the Defendant gave anſwer to the ſaid Bill, and admitted the Juriſdiction of the Court, and after a Decree was made againſt the Defendant, and the Defendant now having ſhewed this ſpecial matter demurred upon this Bill, in reſpect that by his preſence the Court had not juriſdiction to hold plea in the firſt ſuit, and here it was ſhewed, that the

firſt

firſt decree was made upon a matter in Law, not properly examinable by Engliſh Bill, and that in facto, the Law was therein miſtaken, and therefore the Defendant prayed that the decree may be re-examined. Tanfield chief Baron, it is uſual in the office of Pleas, that if an action be brought, as a debtor of our Lord the King, this is good, although that de facto no ſuggeſtion be made thereof, if it be not ſhewed on the other ſide, and therefore a writ of Error for this falſity ſhall not cauſe the judgement to be reverſed, as it was reſolved in a caſe in which I was of Councel, and ſo here as it ſeemeth. Altham Baron, here we are in equity, wherein we are not tied to ſo ſtrickt a courſe, as if it were in the office of pleas. Brock of the Inner Temple for the Defendant, in a Court of equity, it is in the diſcretion of the Court to deny Execution of a decree if good cauſe be ſhewed, and in 18. E. 4. fo. 1. judgement was given againſt a married wife by the name of a feme ſole, and reverſed, although ſhe did not ſhew in the firſt ſuit, that ſhe was married, and in 8. E. 4. judgement was given in the Kings Bench in a ſuit, and by writ of error was reverſed, although the Defendant had admitted the Juriſdiction of the Court, and the chief Baron, and all the Court inclined, that Arden may exhibit a Bill to reverſe this Decree made againſt him, and may ſhew what point in Law the Judges miſtook in the Decree, or otherwiſe we ſhould not do as Law and Juſtice requireth, for it is not expedient to be examined by way of Bar to this Bill in the nature of a ſcire facias: and after Arden according to the Decree of the Court, and their direction did exhibit his Bill in the nature of a writ of error, Compriſing how the firſt decree was erroneouſly made, and prayed, that the ſaid decree might be reverſed, and in his Bill he ſhewed the point in Law, which was decreed, and that upon divers long conveyances appears to be thus, and ſo it was agreed by Councel on both parties; that Arden the father was ſeiſed of the Mannor of Cudworth in the County of &c. and was alſo ſeiſed of the Mannor of Parkhal in the ſame County, and of Blackcloſe &c. which was parcel of the Mannor of Cudworth, but lying neer unto Parkhal, and alwayes uſed and occupied with it, and reputed parcel thereof, but in truth it was parcel of Cudworth, and that Arden the father made a Conveyance of the Mannor of Parkhal, and of all the lands thereunto belonging, and reputed as parcel thereof, or occupied with it, as part, or parcel thereof, and of all other his lands in England, (except the Mannor of Cudworth) to the uſe of Arden his ſon that now is Plantiffe here, and if Blackcloſe will paſs to the ſon by this conveyance, or if by intendment it ſhall be excepted by the exception made, it was the queſtion here, and was decreed in the time of Baron Manwood, that it is excepted by the exception, but all the Barons now thought it, to be a ſtrong caſe, that Blackcloſe is not excepted by the exception of the Mannor of Cudworth, and ſo the firſt decree was upon a miſtake out of the Law: and Tanfield chief Baron ſaid, that the point is no other, but that I inſeoffe you of Blackacre, parcel of the Mannor of D. except my Mannor of D. this doth not except the King by expreſs terms; quær. if in this caſe there was any land occupied with Parkhal, which was not parcel of Cudworth, nor of Parkhal, for if ſo, then it ſeems that Blackcloſe will be within the exception, in regard that the words and lands occupied therewith, viz. Parkhal are well ſatisfied. Harris Serjeant ſaid, that the caſe is to be reſembled to the point in Carter and Ringſteeds caſe, concerning the Mannor of Odiam, where a man was ſeiſed of of a Mannor within which the Mannor of D. did lie, and is parcel thereof, and he by his will deviſed the Mannor of D. excepting the Mannor of Odiam, where the Mannor paſſeth by the deviſe, and is not excepted. Snig and Altham Barons agreed, that this proves the caſe in equity, but by the chief Baron Tanfield, becauſe this is a rare caſe, that we ſhould reverſe or undo a decree made by our predeceſſors in the very point decreed by them, it is good to be adviſed, and therefore they directed Arden to finde preſidents if he could, by ſearch made for them in the ſaid caſe, and therefore the Attorney general who was of Councel for Darcie, had demurred upon the Bill which was exhibited

Trin. 7. *Jac.* in the *Exchequer.*

Trin. 7. *Jac.* in the *Exchequer.*

bibited by Arden, and that he being not preſent, day was given until another term to hear Councel on both parts, at which day the Attorney ſaid, that he conceived it a ſtrange caſe, and without preſident, that a Court ſhould impeach and reverſe the decrees given in the ſame Court, and that if it ſhould be ſuffered, the ſubjects would be vexed and troubled without any end or quiet, and this ſtands with the gravity of every Court to maintain their own judgements, and therefore ſeveral Statutes were made to reverſe judgements upon erroneous proceedings, and judges of other Courts conſtituted to examine them, which proveth, that before the Statutes aforeſaid, and without aid of them the Judges would not reverſe their own Judgements, and ſo here. Harris to the contrary, it is not without preſidents, that in a Court of equity one, and the ſame decree in the ſame Court hath been reverſed by decree of the ſame Court, upon ſome conſideration had of the erroneous miſpriſions of Law, and it is no diſhonour to a Court of juſtice ſo to do for matter in Law, but otherwiſe it were for matter of fact, for then that betrayeth an Ignorance in the Judges, which would be a diſhonour to the Court, but for Law men are not Angels, and for that point, there may be errour; to prove that the Court of equity may do ſo, he vouched the Book of 27. H. 8. fo. 15. Martin Dockwraies caſe, which is our very caſe ruled in the Chancery, and ſo he ſaid, that in this Court 3. Jac. a decree made in the time of Baron Manwood was reverſed upon the like reaſon; and Tanfield chief Baron ſaid to Serjeant Harris, that if it appear by your preſident, that if the ſame matter in Law which was decreed was reverſed in the ſame point in Law, then this proveth for you, but if it were for matter of fact, otherwiſe it is, and therefore we will ſee your preſident.

Kent and Kelway.

KEnt and Kelway entred Hil. 6. Jac. Rot. 722. in the Exchequer, in the caſe between Kent and Kelway, which was debated Paſc. 8. Jac. the Judges pronounced in the Exchequer Chamber, that judgement ought to be affirmed, notwithſtanding their opinion before to the contrary as it appeareth, and therefore I demanded of Mr. Hoopwel Clark of the Errors, what was the reaſon of their opinions, and he told me that the caſe was debated by them this Term at Serjeants Inne, and then they reſolved to affirm the Judgement; and the reaſons as he remembred were as followeth, and he alſo delivered unto me the caſe, as he had collected it out of the Records, and delivered it to the Judges, which was, that the Plaintiff in the Kings Bench declared, that one Benjamin Shephard was indebted to him in 300. l. and that he ſued out of the Kings Bench, an Alias Capias directed to the Sheriffe of N. to the intent to compel the ſaid Benjamin Shephard upon his appearance to put in Bail, according to the cuſtome of that Court, for the Recovery of his debt, which writ was delivered to John Shaw; Sheriffe of the ſaid County, to be executed, the Sheriffe made his warrant, to the Bailiffe of the liberty of the Wapentake of Newark, and the Plaintiffe himſelf delivered it to James Lawton Deputy of the Lord Burley, the Kings chief Bailiffe of that liberty to be executed, and the Deputy Bailiffe by vertue of the ſaid warrant arreſted the ſaid Benjamin Shephard, whereupon the Defendant with others made an Aſſault, and reſcued the ſaid Benjamin Shephard out of the cuſtody of the ſaid Deputy Bailiffe, whereby he loſt all his debt, and damages were aſſeſſed at 172. l. and coſt 10. l. and in this caſe the Judges agreed, that notwithſtanding the Defendant had reſcued the ſaid Benjamin Shephard out of the hands of &c. when the ſaid Benjamin Shephard was arreſted upon an Alias Capias out of the Kings Bench, which writ is only in nature of a plea of Treſpaſs, yet the party who reſcued him, ſhall anſwer in this action, damages for the debt, becauſe the Plaintiffe by this means had loſt his debt. And yet it is not ſhewed,

that

that the Reſcuer knew that the Plantiffe would declare for his debt, but if in this caſe, the Sheriffe or Bailiffe had ſuffered a Negligent eſcape, they ſhould be charged only with the damages in the ſame plea as the writ ſuppoſeth, and no for the debt, and ſo a diverſity: alſo they agreed, that the Declaration is good enough to ſay, that he was reſcued out of the hands of the Deputy Bailiffe, and the courſe in the Kings Bench was alwayes ſo, upon the return of a reſcue, notwithſtanding the Book of the 7. Eliz. Dyer fo. 241. alſo it was reſolved, that the Declaration was good, ſaying that he ſued an Alias Capias without mention of any latitat before ſued: alſo it was agreed, that the arreſt was good made by the Deputy Bailiffe, by vertue of a warrant delivered to the Sheriffe: but quere, if they ſhould not examine, if the Bailiffe had a power given to make a Deputy by his Patent, for this appears not in the caſe. Trin. 7. *Jac.* in the *Exchequer*.

Bently and others, againſt *Leigh* in Treſpas Hill. 45. *Eliz.* Rot. 1231: Trin. 7. *Jac.* in the *Exchequer*.

THe Judges affirmed a Judgement this Term, between Leigh Plantiffe in a writ of Error, and one Bentley, and others Defendants, and the matter aſſigned for Error was, becauſe the Treſpaſs was brought in the year 45. Eliz. for a Treſpaſs made in the 42. Eliz. and the judgement upon the verdict was againſt the Defendant, and the Margent of the Roll it was entred: quod Defendens capiatur, where it ought to be pardonatur (as he pretended) for the general pardon, which was in 43. Eliz. had pardoned the fine to the King for the Treſpaſs, and this is a thing whereof the Judges ought to take notice, as it was ſaid by Damport, who was of Councel with the Plantiffe in the Error, for this word capiatur is of courſe entred in the Roll, for the Kings fine which is due by him who is convicted of Treſpaſs, as it appears by Cook lib. 3. in Sir William Harberts caſe, and in this caſe the fine was pardoned, therefore pardonatur ought to be entred, as it was in Vaughans caſe, Cook lib. 5. but the Judges reſolved, that of theſe general pardons they are not bound to take notice without pleading, for in regard there are divers exceptions in them, the partie ought to ſhew, that he is none of the parties excepted, as the Book is in ——— E. 4. but if they will, they may take notice thereof without pleading, as it ſeems by Vaughans caſe, and ſo ſaid the Judges in the Common Pleas this Term, and ſo here the judgement was affirmed.

Calvert againſt *Kitchin* and *Parkinſon* Trin. 7. *Jac.* in the *Exchequer*.

IN Treſpas by Calvert againſt Kitchin and Parkinſon, upon a ſpecial verdict theſe points were moved and argued by the Councel at Bar, and firſt the caſe in ſubſtance was, that one Parkinſon was a deviſee of the next avoidance of the Parſonage of D. the which Church became void by the death of the Incumbent, and after one A. and the ſaid Parkinſon Simoniacally agreed, that the ſaid Kitchin ſhould be preſented by the ſaid Parkinſon to the ſaid Church aforeſaid, and that after Kitchin not knowing of this Simoniacall agreement was preſented, inſtituted, and inducted to the Church aforeſaid, and all this was after the Statute of 31. Eliz. cap. 6. and after Queen Eliz. intending, that this preſentation belonging to her by reaſon of this preſentation for Simonie, by force of this Statute of the 31. Eliz. preſented one B. and before that B. was admitted, and inſtituted

Trin. 7. *Jac.* in the *Exche-quer.*

tuted the Queen died, and now the King preſented Calvert with out any recital, or mention of the preſentment made by the Queen, and without any Revocation actually made of the ſaid firſt preſentation, and thereupon Calvert is admitted, and inſtituted; and for the Tithes as Parſon he brought Treſpaſs. Hitchcock intended three queſtions as he ſaid, but moved alſo other things. Firſt, if a devilee of the next avoidance be a Patron within the intent of this Statute, of the 31. Eliz. cap 6. Secondly, if within the ſaid Statute here be Simonie in the Patron, and not in the Parſon, if this ought to prejudice the Parſon or not. Thirdly, if the King ought to preſent by this laps after the Queen had made preſentment without recalling of the former preſentation, or if the preſentation of the Queen ought to be adjudged a Turn: to the firſt matter he ſaid, that a next avoidance is a thing devilable well enough within this Statute, for the truth is, it is not a thing of any value in the accompt of Law, and therefore it is no prejudice, although that the third part do not deſcend to the Patron, for the Common Law intends it to be of no value, and he ſaid, that the form of conferring to a benefice, was ad eccleſiam &c. as appears by 7. E. 3. fo. 5. and he vouched Bracton to prove, that the Patron had nothing but to provide, that the Church ſhould be full &c. and to prove, that this is a thing devilable, he ſaid that it was ſo adjudged in the Common Pleas, Mich. 33. and 34. Eliz. Rot. 2122. but admitting that here was not any Patron by reaſon of any deviſe, then if he, who preſented be a diſturber, and had acquired this Patronage hac vice by Uſurpation, then that alſo is given to the King within the intent of this Statute, by reaſon of this agreement for Simonie, and therefore he ſaid, that if he who had but a nomination corruptly agree to make a preſentation, or nomination, this nomination ſhall be forfeited to the King, within this Statute, as it is ſaid in Plowden, in Hare and Bickleys caſe, he who hath the nomination, hath the effect of the Advowſon: and alſo he obſerved the words of the Statute, which ſay, that if any perſon do for money &c. preſent any one &c. that every ſuch perſons preſentation ſhall be void, and it ſhall be lawful for the King to give the ſame benefice, for that turn &c. ſo that if he had title or not, yet this turn is forfeited to the King as by the Statute of 1. Jac. cap. 33. it is provided, if any goods which ought to pay ſubſidie, be laid on the land, the ſubſidie not paid &c. the ſame goods ſhall be forfeited: it hath been agreed, that if a ſtranger who had nothing to do with theſe goods, cauſe them to be laid upon the land, that they ſhall be forfeited againſt the owner, as it was admitted in Leviſon and Kirks caſe, in 7 Jac. and ſo here in reſpect that the true Patron ſuffers a Uſurper to preſent, and his preſentee to be admitted and inducted, this turn ſhall be forfeited to the King, by reaſon of the Simonie againſt the rightful Patron, and he conceived, that although that the Preſentee in this caſe, was not partie to this corrupt agreement, yet he ſhall be prejudiced by it, although not ſo prejudiced thereby, but that he may be capable to be preſented again to the ſame benefice, but, hac vice the preſentation of him is void; for as Littleton ſaith, the preſentee ought to accept the Parſonage ſubject to ſuch charges as the Patron pleaſeth, who in the time of Vacation hath power to charge it, and ſo by his Act had made it ſubject to the forfeiture, and therefore the perſon who cometh under him ſhall be prejudiced, and therefore he vouch[illegible] the caſe in the 19. *H.* 8. fo. 12. if a ſtranger agree to diſſeiſe an infant to the intent to infeoffe the Infant, although that the Infant were not knowing of the Coven, yet he ſhall not be Remitted, becauſe he came in under a wrong deer. To the third matter he ſaid, that the King may revoke his preſentation, and by the ſame reaſon he may preſent another, before his Preſentee is inſtituted, and to prove it, he ſaid, that a Common perſon may recal his Preſentation before the inſtitution &c. and he vouched the Book of the 31. E. 1. Tit. quare impedit 185. the Abbot of Leiceſters caſe, although that Dyer citing of it, 12. Eliz. fo. 292. conceives the Book contrary, but it ſeems to be in reaſon that the Law is cleere, that a Lay perſon may change, although that a Spirituall perſon cannot, and

the

Term. 7. *Jac.* in the *Exchequer.*

the reaſon is, becauſe a Lay perſon did not know his ſufficiency peraddenture at the firſt, but a Spiritual perſon by intendment may informe himſelf thereof wel enough, and therefore he vouched 18. H. 7. and 1. H. 8. Kelloways Reports, which proves that diverſity plainly as he ſaid; then he thought by the ſame reaſon, if the King preſent one, and dye, or vary before inſtitution, that here, he himſelf, or his ſucceſſor, may preſent anew, and ſeemed to him no queſtion, and to this purpoſe he vouched, 12. Eliz. Dyer fo. 292. that he may repeale, and it is not of neceſſity that this inſtrument which purporteth the repeale, ſhould be ſhewed to the Gardian of the Spiritualties, and by the 19. Eliz. fo. 360. in Coleſhils caſe it it is ſaid, that when the King hath preſented, a Repeale by him ought not to be admitted after inſtitution, ſee for ſuch matters in the Book, alſo he vouched Dyer 339. Yattons caſe to prove that the King may repeale his preſentation, by a new preſentation, without mention made of the former, except that the ſecond preſentation be obtained by fraud, as there it is, and he vouched Dyer 294. Goodmans caſe, and ſo he concluded. Damport to the contrary, there are two points,

The firſt is the Patron, and a ſtranger corruptly agree to preſent Kitchin, whereupon he is preſented, if this ſhall be void againſt Kitchin. 2. admitting that the Queen had title to preſent, and ſhe preſents, and dyes before admittance, if the King may preſent a ſtranger, without mentioning the other preſentation to be repealed. As to the firſt, he ſaid that at the common Law, ſo if one be ſimoniacally preſented, yet this is not void untill the Preſentee be deprived, and if before this Statute, ſuch a corrupt preſentment had been made, the incumbent and ordinary being free, then no preſentment ſhould enſue, and he vouched the ſaying of Linwood an Author of the Civill Law to be accordingly, but if money be given by the friends of the Preſentee, and after the King had notice thereof and aſſent, then it is not puniſhable, but pardonable at the diſcretion of the King, and now by him the Statute provides no puniſhment for the perſon, when the Patron only conſents to the Simonie, for he obſerved that after the ſaid Statute of 31. Eliz. had appointed a puniſhment for the Patron then in the laſt part of this branch the words are, the perſons ſo corruptly taking, &c. ſhall be incapable of the Benefice aforeſaid, and ſo it ſeemeth, that the intent of the Statute is not to puniſh any party, but he that is to the Simonie, and this is alſo explained to be ſo, by other Cláuſes in the Statute, for another Clauſe inflicts puniſhment upon the Ordinary, if there be any corruption in him, and another clauſe inflicts puniſhment upon him who is party to a corrupt reſignation, and ſo in all the clauſe, thoſe only who are partakers of the Crime ſhall be puniſhed, and to prove that ſuch conſtruction hath been made upon penall Statutes, that he only ſhall be puniſhed, who had notice of the crime, he vouched Littleton who ſaith, that upon the Statute of Glouceſter notice was requiſite, or otherwiſe no default, alſo he vouched to this purpoſe the caſe of Pickering in 12. Eliz. Dyer fo. 292. a Lay Perſon preſents a Baſtard to a Benefice, who was admitted accordingly, &c. and in a ſuite thereupon, iſſue was admitted to be taken, if the Patron knew that he was a Baſtard, ſo if he had no notice thereof, then there is no default in him, and he vouched 43. E. 3. to this purpoſe, & 22. E. 4. tit. conſultation, and he well agreed. Cloſſe and Pomcoyes caſe now lately adjudged, which was, that Sir George Cary being ſeiſed of an Advowſon, granted the next avoidance to his ſecond ſonne, and dyed, and after the Sonne, corruptly agreed with *I. S.* to procure the ſaid I. *S.* to be preſented to this Benefice, and the ſecond brother knowing thereof, it was agreed, that for the perfecting of the agreement, the ſecond Brother ſhould ſurrender his Grant and intereſt to the elder brother, which elder brother not knowing of the ſaid corrupt agreement, preſented the ſaid I. S. who was inſtituted, &c. all ſhall be void, for he is preſented here by reaſon of this corrupt agreement between the Patron who then was, and the parſon, and the elder Brother was only uſed to convey a bad gift by a good hand, and all had reference to the corrupt agreement, with the aſſent of the Patron who then was, but here in our caſe was no agreement aſſented unto by

Trin. 7. *Jac.* in the *Exchequer.*

the Parſon, and this diverſity alſo ſeems to be good, that if A. hath the preſentation, and B. the nomination to a Benefice, and the Preſentor upon a corrupt agreement, makes a preſentation unknown to the Nominator, here the Nominator ſhall not be prejudiced within this ſtatute. As to the ſecond matter it ſeemes, that by the demiſe of the Queen this preſentation is not countermanded or repealed in Law, and therefore he ſaid that he would agree, that if the Queen had made ſuch an Act which was only a bare Authority without intereſt, this will determine by her death, as it was ruled for a Letter of Attorney to execute livery of Dutchy Lands, for this is a bare Authority, and is a means to do a thing to her prejudice, and he agreed that by implication or without cauſe a common perſon could not vary from his preſentation, as if a Feme ſole preſent, and intermarry, this is not controuled by her marriage, for it is a thing which is not to her prejudice, and he vouched Cook lib. 4. Forſe and Hemlins caſe, and one Marke Ogles caſe, proveth that the death of a Common Patron is no revocation of his preſentation, for if a man preſent, and dye, if it be a diſturbance, his Executors may have a Quare impedit, and much more in the caſe of the King who dyeth, but he well agreed, that the King might have repealed his preſentation, and after have reſumed it again, which proveth that it is not a meere Authority, but mixt with an intereſt, for an Authority revoked cannot be revived, but without Actuall repealing it is not to be avoided, and therefore he vouched Sir Thomas Wrothes caſe in Plowden fo. 457. That if the King grant to one licence to purchaſe Land, in reſpect that by a means this doth acquire an intereſt to a party, this doth not determine by the demiſe of the King, although the Grant be not for the King and his Succeſſors; ſo here this preſentation is a meanes to give an intereſt to the Party, and therefore is not determined by the Demiſe of the King, and he vouched 1. Ma. Dyer fol. 92. and ſo if it be a Licence diſpenſative, this is not determined by her death, and he vouched 3. E. 3. fo. 29. cited in *Sir* Thomas Wrothes caſe, ſee more after.

Sir *Daniel Nortons* caſe.

IN Sir Daniel Nortons caſe it was agreed that where one Oglander was chargable to the King for 27. l. for an Amercement, for which Proceſſe iſſued out of this Court to Sir Daniel Norton Sheriff of Hampſhire to levie it, and his under Sherif being Chamberlain came to Oglander upon another occaſion, and Oglander ſaid unto him, Chamberlain you do owe unto me 30. l. by bond, I pray you pay me, whereunto Chamberlain ſaid, you are to pay me 27. l. for an Amercement which I ought to Levy againſt you by Proceſs which I have, and if you will give me my Bond, I will give you 3. l. and diſcharge you of the ſaid Amercement, to which Oglander agreed, and delivered the Bond accordingly, and all this Oglander diſcloſed by Affidavit, and further ſaid, that Sir Daniel Norton had taken his goods for the ſaid Amercement again, this not being diſcharged in the Office, and it was ſaid by the Court, that this was a good levy of the ſaid Amercement by Chamberlaine in the Law, and therefore Sir Daniel Norton ought to be charged for it to the King, as a thing levied by him, and Oglander ſhall be diſcharged of any another levying, and therefore, &c.

Sawier againſt *Eaſt.*

SAwier againſt Eaſt in an Ejectione firmæ for certain Mills in Eaſt Smithfield called Cruſh Mills, a ſpeciall Verdict was found that Queen Eliz. was ſeiſed of them in right of her Crown, and the 28. of her Raign leaſed them to Potter for 40. years, who in the 30. Eliz. dyed, and Mary his Executrix entred, and took

took to Husband one *Burrell*, which Burrell 33. Eliz. demiſed parcell to Wilkinſon for 20. years, and dyed, Mary took Hitchmore to Husband who in 44. Eliz. 2. May ſurrendred to the Queen, and after the 2. of June 44. Eliz. the Queen reciting the firſt Demiſe made to Potter, the intereſt of which is now come to Hitchmore, and that he had ſurrendred to us, demiſed the premiſſes to Hitchmore as well in conſideration of xxx.l. paid as for that, that the ſaid Hitchmore did aſſume upon himſelf to repair the ſaid Mills at his own coſt being greatly in decay, and to leave them ſo repaired, and the Jury alſo found that in the ſame Patent there was a Covenant that Hitchmore ſhould repaire them, &c for the doing thereof he had given ſome aſſurance, and that the Mills were not repaired, and that the Leaſe made to Wilkinſon is now in Eſſe, being for 20. years, and that the King that now is, had granted the ſaid Mills to the Leſſee of Sawier, &c. Walter for the Plaintif, Firſt, it ſeemeth that this falſe recitall in the leaſe made to Hitchmore makes the leaſe void, and the point is, that the King by recitall in this Leaſe, intends that all the intereſt of the former leaſe was ſurrendred, whereas Wilkinſon was poſſeſſed of part thereof, and ſo it is in deceit of the Queen in matter of Profit, and therefore makes the new Leaſe void, and to prove that a falſe recitall in the Patent may avoid it, he vouched 37. H. 6. fo. 23. 3. H. 7. fo. 6. and 11. H. 4. fo.—in all which caſes it is ſaid, that if the King make a Grant upon a ſuggeſtion made to him which is falſe, this will avoid the Patent, but if a true ſuggeſtion be made to the King, and he himſelf thereupon makes a collection or ſurmiſe, this doth not avoid the Patent, as the Lord Chandos caſe, Cook L. 6. and by 21. E. 4. fo. 48. By Huſſey, but there if the ſurmiſe of the party be falſe in any thing, this avoids the Patent, and therefore Huſſey there ſaith, that if the King recite: that whereas the Mannor of D. is eſcheated to him, and he grants it to A. where in truth it was parcell of his Antient Inheritance, this doth avoid the Patent, but there by him if the King recite that whereas his ſervant is decrepit, he of his meere motion grants the Mannor of D. to him, this falcity doth not avoid the Patent, becauſe the conſideration is of his meere motion, and by intendment the recitall is not the information of the party, and then in our caſe, the leaſe is not ex gratia, &c. and the recitall is the recitall of the party, for it is of an Act done, viz. of a ſurrender ſuppoſed to be made by the party, and that upon the matter is reſolved to be a cauſe to avoid the Patent, as it is in the Lord Chandos caſe and ſo alſo holden by Huſſey in 21. E. 4. fo. 48. and 9. of E. 4. in Baggots Aſſiſes, if the ſurmiſe of the party be falſe, and valuable to the King, then the falcity there avoids the patent, but if it be not of a thing valuable, or beneficiall to the King, the falſity doth not avoid the Patent, 29. E. 3. Grants 58. if the King recites that whereas the Advowſon of D. is holden of A. and he licenceth A. to appropriate, if in facto, it be holden of the King himſelf, the licence is not good, becauſe the King is deceived in matter of profit, and ſo 12. Eliz. Dyer 292. and 25. E. 3. there cited, where the King preſents, and before admiſion; he repeals, and then recites, that whereas his Preſentee is Canonice inſtitutus, &c. and confirms it, here although that the Biſhop after this repeale had inſtituted the party, yet it appears, that the recitall, which is void, makes alſo the confirmation void, 8. H. 7. fo. 3. 9. H. 6. fo. 28. and 21. E. 4 if the King recite, that whereas the Mannor of D. came unto him by the Attainder of A. he grants to B. and in truth this did not come by the Attainder of A. but is an inheritance of the Crown, this avoids the Grant, and 21. E. 4. fo. 28. by Bryan, if the King recite that he is indebted to A. in 20. l. and grants to him the Mannor of D. if he be not indebted to him the Grant is void, and ſo it appears by Sir Hugh Cholmleyes caſe, Cook lib. 2. fo. 54. that if the Queen recite a thing, the falſitie whereof doth prejudice her in matter of profit, now the miſrecitall avoids the Patent, as there it was admitted, that if the Queen recite that whereas A. is ſeiſed of an Acre in taile upon a condition, &c. and ſhe grants the reverſion to B. here if the ſtate of A. were without a condition, the grant of the reverſion is void,

Mich. 7. Jacobi in the *Exchequer.*

Mich. 7. *Jac.* in the *Exche-quer.*

for this falſe recitall, and according he vouched Alton Woods caſe, Cook L. 1. and in our caſe it is prejudiciall to the Queen, that all the intereſt in the former leaſe is not ſurrendred, but a part thereof is in Wilkinſon, for the Queen intended that all this Land now leaſed ſhould be immediately lyable to her rent newly reſerved, where in deed it cannot be ſo here, untill the ancient leaſe be determined, whereby, &c. this recitall is tacitely intended part of the conſideration: For the ſecond Point, it ſeemeth that here is a falcity in the conſideration expreſſed, for the Queen leaſed to Hitchmore as well for 30 l. as for that, that he aſſumed to build and ſuſtaine, ſo that the aſſumpſit to build and ſuſtain is part of the conſideration, and therein the Queen is deceived, and to prove that the word (pro) is as good as if it had been in conſideration, he vouched 43. Eliz. Luttrels caſe, that the word (pro) implyes a conſideration, and here the finding of the Jury is, that no other ſecurity or aſſurance was given to the Queen, here the Queen can have no remedy upon this promiſe without matter of Record, and this is proved by 26. *E.* 3. fo. 20. and without queſtion the King intended by this Aſſumpſit that ſhe might have remedy for the not performance thereof, and although the Jury finds a Covenant in the Patent for repairing, yet this is no ſufficient performance of the conſideration, for the words (ſuper ſe aſſumpſit) implay a thing precedently done, and not to be done or contained in the ſame Letters Patents, as if the King recite in conſideration that A. had ſurrendred, he grants the ſame land ſuppoſed to be ſurrendred, although the very acceptance of the new grant is a ſurrender, yet this is not the ſurrender intended, nor this is not the conſideration which moved the King, for he intendeth a precedent ſurrender, and the very words and intent ought to be performed in the point of conſideration, or otherwiſe the grant is meerely void, although it be not of a thing beneficiall to the King, as appears by Cooke lib. 6. in the Lord Chandos caſe, and although the conſideration be but of a perſonall thing, and not of a reall, as the difference is taken by our Books,) and although that the conſideration be of a thing executed, and not Executory, (as alſo ſome Books take a diverſity) yet as it ſeemes to me the falcity herein avoids the Patent, for this is of a thing which ſounds to the Kings commodity, and he vouched Barwicks caſe, Cook l. 5. 94. and 3. H. 7. that if the King for money paid makes a grant, &c. there it ought to be averred that the money was paid, and in 21. *E.* 4. fo. 48. if the King in conſideration that A. had releaſed a debt wherein truth there was no ſuch debt, &c. this falcity avoids the grants. Alſo if the King in conſideration that A had ſurrendred his Letters Patents of an Eſtate Taile, Grants him, &c. although that by the ſurrender the King was to have benefit notwithſtanding becauſe the eſtate yet continueth, therefore this falſity avoids the Patent, as appears in the Lord Chandos caſe, Cook Lib. 6. Altonwoods caſe, Cooks lib. 1. fo. 43. and in our caſe the conſideration is of a thing beneficiall to the King to be performed, therefore the falcity much more avoids the Grant: Alſo the Covenant found here to be made doth not aide the matter at all, for it is not proper to be called a Covenant in Letters Patents, becauſe he did not ſeale unto it, and it cannot be called his deed, but yet ſhall be bound thereunto for his eſtate, but not by way of action, as the conſideration intends. Alſo it ſeemeth, notwithſtanding the conſtruction here was, that in conſideration the Leſſee would repaire, &c. yet as our caſe is, the Patent is void, becauſe it is not repaired according, as appears by Barwicks caſe, Cook lib. 5. fo. 94. that if the conſideration in the caſe of the King be not duly performed, and that prejudice may accrew to the King, by reaſon of the not performance thereof, this avoids the Patent. Alſo if the caſe be ſo, this would be an eſtate conditionall between common perſons, 38. H. 6. and the 6. E. 6. Dyer, 72. and 21. E. 4. by Huſſey pro quod Relaxabit, &c. and ſo in Sir Thomas Wrothes caſe, Plowden, and 15. *E.* 4 for the King had no other remedy to compell the thing to be done, except to ſeiſe the land for the not performance, & therefore it appears by 21. E. 4. and Cook in Altonwoods caſe, that the Grantee ought

to

to plead this conſideration to be perfoꝛmed on his part, which alſo appears by Sir Thomas Wrothes caſe, if it be of a thing Executory, and ſo foꝛ all theſe cauſes I pꝛay that Judgement may be given foꝛ the Plantiffe. Crook George at another day argued to the contrary, and he anſwered three points. Firſt, it hath been agreed, that the leaſe is void upon a falſe conſideration imployed, viz. the miſ-recital. Secondly, admit that it is not void foꝛ that, yet here part of the expreſs conſideration is not perfoꝛmed. Thirdly, the leaſe made to Hitchmore was in Judgement of Law conditional, and the condition not being perfoꝛmed makes an avoydance of the leaſe. To the firſt point it ſeemeth, that this falſe recital doth not avoid the Patent, yet I agree the caſes, and Books which have been cited out of 9. H. 6. fo. 27. and 29. E. 3. Grants 58 foꝛ in theſe Books it appears, that the King is deceived both in point of ſuggeſtion, and in point of intereſt, but our caſe is not upon a falſe ſuggeſtion, which doth pꝛejudice the King in intereſt, and in our caſe the King expꝛeſſeth another thing to be the Conſideration of his grant, and the ſuggeſtion is not the conſideration, and therefoꝛe there is a great diverſity, and to warrant this to be a material diverſitie, he vouched the Rule of the caſe in 21. E. 4. fo. 49. in Sir Thomas Wrothes caſe in Plowden, foꝛ in 21. E. 4. it is agreed, that the miſ-recital that it was the Kings free Chappel, is not material foꝛ the King, is not deceived in point of intereſt, and although that the book 3. H. 7. fo. 6. is that if the King releaſe to a Pꝛioꝛ a Coꝛoody, becauſe that the Pꝛioꝛy was of the Kings foundation, whereas it was of another mans foundation, and therefoꝛe the releaſe ſhould be void, becauſe of the falſitie, although that it be a falſitie in the conſideration, and ſo moꝛe ſtꝛong then in our caſe, yet in the ſaid caſe, it was adjudged to be a good releaſe, as appears in Plowden 331. put in the caſe of Mines, and ſo is 3. H. 7. fo. 7. and that this is not Law; ſee Altonwoods caſe Cook lib. 1. accoꝛdingly, and as to the book 15. E. 3. there cited, he did agꝛee unto it, foꝛ if the King hath the title to pꝛeſent, and he pꝛeſenteth one not accoꝛding to this title, this pꝛeſentation is void: ſee Greens caſe in the Kings Bench 44. Eliz. accoꝛdingly, and now repoꝛted by the Loꝛd Cook lib. 6. fo. 29. 8. H. 7. fo. 3. if the King grant the Mannoꝛ of D. of the value of 10. l. and this is of the value of 20. the King is deceived in the matter of value by the Infoꝛmation of the party, and therefoꝛe the grant is void, which was agreed in point of judgement in the Kings Bench 2. Iac. ——between Maſon and Chambers, but there it was adjudged, that if the King will grant to A. the Mannoꝛ of D. which Mannoꝛ is of the value of 10. l. yearly whereas it is woꝛth 20. l. yet the Grant is good, becauſe the woꝛds which Mannoꝛ is woꝛth ꝛc. are woꝛds but of the Kings recital, and in our caſe here is but one expꝛeſs Conſideration, and therefoꝛe the recital is not materia', ſee 37. H. 8. Brook Patents 100. that book maketh a quære, if a falſe conſideration doth not avoid a Patent aſwell as a falſe ſuggeſtion, but the book upon which I do pꝛincipally relie, is a point reſolved in the pꝛincipal caſe of Altonwood, Cook lib. 1. fo. 45. oꝛ 43. where the King recites that he had made a leaſe to A. and B. and that whereas they had ſurrendred the Patent of the ſaid leaſe, he in conſideration of the ſaid ſurrender makes a new leaſe to A. and *B.* here although, that in fact the demiſe ſuppoſed in the recital to be made to A. and B. was void, and ſo the King was deceived in the matter of recital, yet in reſpect that he made the ſurrender of the Patent to be the ſole conſideration of his grant, the falſitie of his recital is not material, foꝛ the Judges ought to take it to be a Motive to the King in his Grant, which he did not expꝛeſs to be a Motive, eſpecially if he expꝛeſs another Motive, and ſo in our caſe; alſo it ſhould be greatly miſchievous to Hitchmore, if this falſitie of the recital ſhould pꝛejudice him, foꝛ by intendment it is not in his power to infoꝛm the King of this leaſe, which was made by Burwel to Wilkinſon, becauſe he is a ſtranger unto it, and alſo the leaſe is not upon Recoꝛd, and therefoꝛe Hitchmore is not bound to take notice of it; ſee temps H. 8. Brook, Action upon the caſe ꝛc.

Mich. 7. *Jac.* it the *Exche-quer.*

and

Mich. 7. *Jac.* in the *Exchequer.*

and alſo the leaſe here made by Burwel to Wilkinſon is to have continuance but for 8. years after the time of the commencement of the new leaſe made to Hitchmore, and ſo the King then ſhall have it liable to his rent newly reſerved, and ſo in theſe circumſtances our caſe differs in matter of prejudice, from Barwicks caſe *Cook* lib. 5. for there the Kings Leſſee made divers under Leſſees for all his Term, and after he himſelf by fraud accepted a new leaſe of all rendring rent, which new leaſe was in conſideration expreſly of a ſurrender of the firſt demiſe, and of all the eſtate &c. and this leaſe was there void, and ſo the diverſitie appears, alſo in 18. Eliz. Dyer 352. where the deceipt to the Queen was in point of expreſs conſideration, and yet the Lord Dyer ſaid, that in that caſe the grant was not void, , and then much more in our caſe, but admitting that the leaſe ſhould not be good, notwithſtanding this falſe recital, yet it hath been objected, that the conſideration is not performed according to the Kings intention, for the words of the leaſe are, know yee now, aſwel for a fine of 30. l. as for that, that Hitchmore had aſſumed to repair the Mills at his coſts and charges &c. and that here the ſaid Hitchmore had not aſſumed by Record, ſo that the King may have any remedy againſt him, for his not repairing, and that the contract is no aſſurance: it ſeems to me that the words, for that, that he aſſumed, and the expreſs Covenant was ſufficient to ſatisfie the intent of the Conſideration, for the words are, the words of the King, and of the Patentee, alſo in judgement of Law, and therefore Paſch 7. Iac the Lord Evers and *Stricklands* caſe was adjudged, the Lord Evers had made a leaſe by Patent, in which theſe words were contained, viz. and the aforeſaid Leſſee ſhall repair the aforeſaid Tenement, and that after the reverſion was granted to the Lord Evers, and it was adjudged, that the Lord Evers ſhould have a Covenant againſt the Leſſee, and this was in the Kings Bench, Paſch. 7. Iac. and ſo here for that he had aſſumed upon himſelf, it is an accord ſufficient to teſtifie his promiſe, whereupon the King may have remedy to compel a reparation to be made, and although that the words are not perſonally ſpoken by the Leſſee, yet he ſhall be bound to perform them, as it is in 38. E. 3. fo. 8. if one takes benefit by a leaſe which he never ſealed unto, yet he ſhall be bound to a nomine penæ therein contained, and beſides here is an expreſs Covenant, and therefore, &c. Thirdly, it hath been objected, that the eſtate is conditional by theſe words, he hath aſſumed to repaire, which condition is not performed, and ſo the leaſe made to Hitchmore void, and 38. H. 6. 34. and 35. hath been vouched in proofe, which book I do agree, for there the King had no other remedy to have his intent performed, and alſo the words there, are ad intentionem doth not make the eſtate conditional, and he vouched Brook condition 96. and 43. E. 3. 34. and *Perkins* 144. that if the Queen give land, and that the Donee ſhould not Amortize, that makes not the eſtate conditional for the Amortizing, and ſo if a man make a feoffment to A. that he ſhould pay 10. l. and that R. may enter for non-payment, yet this maketh not a Condition, the reaſon is, becauſe the firſt words leaves it to the libertie of the feoffee, and the words after ſhall not be conſtrued to make it conditional, but I agreed the caſe put in Sir Thomas Wrothes caſe in Plowden, Pro eo quod relaxabit, that this makes a condition if it be not performed, becauſe it is of a thing, futurely to be done, or Executory, and the King had no other remedy; alſo in our caſe the circumſtances manifeſt, that the Kings intent was not to make a conditional eſtate upon this leaſe, for he accepted an expreſs Covenant for the requiring, and he vouched the Lord *Cromwels* caſe, in *Cook* lib. 2. fo. 72. and he ſaid, that if here the leaſe had been made to Hitchmore, in reſpect he had agreed to increaſe his rent, and further had a clauſe of diſtreſs for the rent, it ſhall not be intended, that the King in ſuch caſe purpoſed to make the leaſe conditional, if the increaſe be not paid, becauſe he had provided himſelfe a diſtreſs, wherein although that the King had no more remedy, then by the Law he ſhould have had without theſe words, yet the words manifeſt his intent

to

to have no other remedy but the diſtreſſe, ſee 7. E. 6. fo. 79. and 3. *E.* 6. Dyer, Non licebit alienare makes no condition in the caſe of the King without the words ſubpœna foris facturæ, and he vouched, 4. *Ma.* Dyer 138. the Counteſſe of Surreyes caſe, and alſo 18. Eliz. Dyer 348. which as he ſaid, was one Greens caſe, where it was adjudged. that if the King provide himſelf of another remedy, the words by reaſon of any implications ſhall never be conſtrued to be conditionall, and ſo was the opinion of Manwood and Harper in Wellock and Hamonds caſe cited in Barraſtons caſe, Cook lib. 3. and 31, *E.* 1. Voucher 141. A man made a Feoffement with warranty againſt all people rendring rent, and further willed that if the Feoffee could not enjoy the land, that he ſhould pay no rent, here the words ſubſequent take away the force of a recovery in value, which the warranty otherwiſe would have given, and ſo here the King had appointed the remedy which he intended to have, and therefore it ſhall not be conſtrued to be conditionall, becauſe the conſideration intended is executed, viz. that he hath aſſumed, &c. Dyer 76. and 44. Eliz. in the Kings Bench, Sir William Lees caſe, in conſideration that he had aſſumed to make a releaſe another promiſed to pay him 10 l. an action may be brought for the 10 l. without averment of making the releaſe, becauſe the conſideration is a thing executed, viz. the Aſſumpſit, &c. but if Executory, then the Grant is conditionall, as 9. E. 4. 19. & 15. E. 4. 9. If an Annuity be granted pro concilio impendendo, this makes the Grant conditionall, and void for not giving counſell, but otherwiſe it is if it be pro conſilio impenſo, 4. But admitting that here it was conditionall, yet the Queen cannot avoid it without Office, and ſo the Plaintiff had no title to enter for an avoidance which was before his grant, and ſo the leaſe is in eſſe at the time of the Grant made to the Plaintiff, your Grant is without recitall thereof, and therefore is void, ſee Knighes caſe Coo. lib. 5. If there be a condition to re-enter for non-payment, an Office ought to be found, but if it be upon condition to ceaſe for non-payment, then it is void to the King without Office, as it was agreed in this Court in Sir Moyle Finches caſe, and he vouched Cook lib. 1. Altonwoods caſe, to prove that the leaſe ought to be recited in the Grant of the reverſion, or future intereſt, and here although there be a non abſtante in your Patent, this doth not aid you, becauſe it is not found in the ſpeciall Verdict: Alſo for another cauſe the Plaintif ſhall not have judgement here, for it is not found that the Queen died ſeiſed, neither that it came to the King that now is, and ſo it cannot come to the Plaintiff, and although a fee-ſimple ſhall be intended to continue in the ſame perſon, yet without ſhewing it ſhall not be intended to come to the heir, 7. H. 7. 3. and ſo he prayed judgement for the Defendant. Tanfield chief Baron ſaid, that the caſe here is by Verdict, & therefore we ought to intend ſuch circumſtances, if they be not expreſſed to the contrary: alſo the ſeiſin of the Queen is ſhewed to be in Jure Coronæ, and therefore the intendment that it may be deviſed by diſſeiſin, or abatement between common perſons holdeth not here.

Mich. 7. *Jac.* in the *Exchequer.*

Carew againſt *Braughton* Mich. 7. Jacobi in the Exchequer.

THomas Carew Executor of William Carew brought debt againſt Morgan Broughton Sheriff of the County of Cardigan, and the caſe was that John Wyner was in execution upon a Judgement for William Carew, and that after William Carew died, and that John Wyner brought an Audita querela againſt Carew, Executor of William Carew, and upon that Writ he had a venire facias againſt Thomas Carew, and thereupon (as the Stat. apoints of 11. H. 6. cap. 10.) he put in baile by recognizance in the Chancery to the ſaid Thomas Carew, and one of the parties for his baile was Thomas Wyner, and after upon the Audita Quærela, Judgment was given againſt the ſaid Wyner, and a Scire facias awarded & iſſued againſt Thomas Wyner as

Mich. 7. *Jac.* in the *Exchequer.*

as Bail, and after the ſaid Thomas Winer was in execution upon this Recognizance as Bail to the ſaid Thomas Carew, and the ſaid Morgan Broughton being Sheriff, ſuffered him to eſcape, upon which eſcape Thomas Carew brought debt againſt the Sheriff in the debet and detinet, and had a verdict to recover, and now in arreſt of judgement it was moved by Jefferies that the action ought to be brought in the detinet only, and he ſaid that if an Action be brought as Executor, this alwaies ought to be in the detinet only, and he vouched Hitchcock and Browns caſe remembred at the end of Hargraves caſe, lib. 5. where the caſe was, that one Anthony Brown Executor brought debt againſt one Liſter, and that Liſter being in execution, the wife entermarried, the ſaid Liſter eſcaped, the Husband and Wife brought debt for his eſcape in the debet and detinet, and there it was reſolved that it ought to be in the detinet only, and ſo here, and ſee the cuſtome to pleav mentions, that the Recognizance acknowledged was to the uſe of the Executor: and not to the uſe of Thomas Carew by his name, but Wild of the Inner Temple prayed judgement, and ſaid that the Action is well brought in the debet and detinet, and he vouched 9. H. 6. and 20. H. 6. if an Executor recover, and after upon the Judgement he brings debt, it ought to be in the detinet, but if an Executor ſels goods of the Teſtator, and takes an Obligation in his name as Executor, yet here the Action upon this Obligation ought to be in the debet and detinet, becauſe it is upon his own contract, and 1. E. 3 Brooke Executor pla. 287. although it appears there, and ſo by 9. H. 6. fo. 11. That is good either way, and 41. E. 3. Brook pla. 545. that if a debt be brought againſt the Executor upon a contract made by them, it ought to be in the debet and detinet, or otherwiſe the Writ ſhall abate, and as 9. H. 6. is at his pleaſure to name him Executor or not, and therefore &c. Snig the ſecond Baron, if the Executors bring an Action of goods carried away in the life of the Teſtator &c. and hath judgement to recover 20. l. and dammages for them, and upon this judgement he brings debt, this ſhall be in the detinet, Altham 3. Baron, if an Executor ſells the goods of the Teſtator, and an Obligation is made to him for the money for which they were ſold, without doubt this action ſhall be in the debet and detinet, for the action concerns him in his perſon, and ſo if he with his own money redeem goods which was pawned by the Teſtator, &c. and the Stat. of the 11. H. 6. cap. 10. is that upon an Audita Querela the party who ſueth it ſhall put in Bond to the party, &c. and the Teſtator is not party at the time of this Audita Querela, but Thomas Crew who is the Executor, and it is not as a Proces of execution purſuant, &c. but is a new thing, and ſo for his opinion ſuddenly it is good in the debet and detinet. Bromley the 4. Baron ſeemed cleer, that if a Bond be made to an Executor upon a ſimple Contract made with him for the goods of Teſtator, there the action ought to be brought in the debet and detinet, but this account is conceived upon a dependency of a duty to the Teſtator, and therefore it ought to be detinet only. Tanfield chief Baron, the caſe is doubtfull, and therefore it is good to be adviſed, but for this time it ſeemeth there is a diverſity where the Recognizance is Legally forced, and where it is voluntary, for in our caſe the Law compels this Recognizance upon the ſuite which the Executor proſecuteth as Executor, &c. and for the Teſtator, and there it ought to have a reſemblance of the Regionall debt, and although that the Statute appoints that the ſayl ſhall be to the party, as Altham Baron remembred, yet here as the pleading purports, the Bayl is to the aforeſaid Executor, which implies a legall dependency upon the firſt ſuit. Then it hath been granted, and the Law is ſo, that if an Executor recover a debt, which was due to the Teſtator, and hath judgement for it, now if you will have an action upon this judgement, this ought to be in the detinet, becauſe it is a legall purſuance of a thing given to the Teſtator, and not voluntary as a bond for further ſecurity or aſſurance, and ſo here the Bayl being purſuant and compulſory, but by 5. E. 3. if it be voluntary, then it ought to be put in the Kings Bench to an Executor which is to be reſembled

reſembled to our caſe, if an Executor bring debt upon a Bayl, it ought to be as Executor, and not as J. S. cleerely: Altham the Bayl in the Kings Bench is upon the originall ſuit, and ſo it is not here, wherefore, &c. to which it was not anſwered, but for that matter it was adjourned, ſee H. 6. in the Kings Bench, if a Feme, &c. take Husband, and one of the Debtors of the Teſtator promiſe the husband if he will forbear his ſuite to pay the debt, if the Husband will commence his action upon this promiſe, it ought to be in the name of his Wife alſo, becauſe the action purſueth the Originall debt. Williams contr. it was agreed that if the Law were ſuch, that the Action ought to be in the detinet only, then the bringing of it in the debet and detinet is ſuch a Jeofaile as is not aided by the Statute of 18. Eliz. Nichols caſe, and Chamberlains caſe. Cook lib. 5. Tanfield chief Baron ſaid in this caſe, that it is proper that the Action ought to be brought in the detinet only, but as our caſe is, here is no iſſue joyned, becauſe here is not a negative, and an affirmative, for the declaration is, that he oweth and detaineth, and the Bar whereupon the iſſue is joyned is, that he oweth not, ſo where if his Action ought to be in the detinet, then there is not any Negative, and ſo no iſſue, which was not denyed: at another day they agreed that the action ought to have bin in the detinet only, and therefore judgement was given that the Plaintif take nothing by his bill. Mich. 7. Jac. in the Exchequer.

Sir *Henry Browns* caſe touching the Counteſſe of *Penbrook*.

SIR Henry Browns caſe, wherein Hawkins and Moore were parties, was this, the Plaintif declared of an ejectment of the Mannor of Kiddington, Dale, & Sale, and doth not mention them to be adjacent to any Ville, and alſo of an 100. Acres of Land lying in the ſame Ville of S. and that upon not guilty pleaded, the Jury at the Aſſiſes at Oxon were ready, and then the Defendant pleaded, that the Plaintif after the laſt continuance had entred into a Cloſe called Well Cloſe parcell of the Tenements mentioned with concluſion, and this in the Declaration he is ready to aver, and demanded judgement if it, &c. and this was before Yelverton Judge of Niſi Prius there, and now the Plea here was debated: And 1. in this caſe it was upon conference with all the Judges allowed, that this plea may be pleaded at the Aſſiſes well enough, and the Judge there accepting of it, had done well, but as Tanfield chief Baron ſaid, the Judges may allow it or not, for if they perceive that it is Dilatory they may refuſe it, for it is in their diſcretion, and therefore, &c. But by Dodderidge the Kings Serjeant, the Judge of Niſi prius is not Judge thereof, if it be well pleaded or not, but is to give day to the Parties in Court where the Suit depends to maintain this Plea, for he is only appointed Judge to take the iſſue, and upon ſuch Plea he ought to diſcharge the Jury of the matter in iſſue, and record the Plea, and this is all his duty, and by him in this caſe here is a Diſcontinuance, for the parties have no day given upon the Roll as it ought to be, for the day in bank in judgement of Law is all one with the day of Niſi prius, and this is of courſe given to the Parties to hear Judgement only concerning the matter in iſſue, and here is other matter, and therefore the Judge, &c. Nota, that in all Caſes where a thing is pleaded triable before other Judges, the Judge before whom it depends ought to give day to the Parties to be before the Judges where the matter is tryable, 12. E. 3. Voucher 115. and Title Day, 25. and 34. and Aſſiſe pla. 14. a Lord demands Cognizance of Pleas, day ought to be given to the Franchiſes, or otherwiſe it is a diſcontinuance of the Niſi prius, for there ought to be a ſpeciall day for the parties here to hear judgment in this Plea, 10. H. 7. fo. 26. ſo if at the Niſi prius a protection be caſt, the Judges ſhall give day to the Parties in Bank to hear judgment, if this protection ſhalbe allowed or not, for the Judg of Niſi prius is no Judg therof: Alſo the Judg in this caſe ought to have diſcharged ye Jury, & it appears not here ye he had done ſo, &

Mich. 7. *Jac.* in the *Exchequer.*

therefore upon the whole matter it is a discontinuance, but admitting that here was no discontinuance, it seemeth that the plea was good; and I agree, that in all cases of Pleas issuable, the plea ought to be expressly shewed; or that which Tantamounts, and here is shewed that which Tantamounts, for when the Plaintiffe in his Action had shewed the names of the Mannors, and the Towns in which the acres lies, then the Venue to try it for every parcel shall come de vicineto from all together, and by consequence it is reasonable, that the Venue for the trial of one particular to be parcel, or not parcel shall come from all, for if the plea in this case were, that the Plaintiff hath entred into the premises, this had been good, and then if it be good for the general, it seemeth it should be good for every particular; also it is clear that two may be parcel of all the three Mannors, as in this case it is admitted to be parcel of all the premises by the demurrer if so &c. Coventry, the plea here is not good, for the plea is to the writ, and the conclusion ought to be pursuant to the premises of the plea, or otherwise the plea is not good 36. H. 6. if a man plead to the writ, and conclude to the Action it is evil 20. Eliz. Dyer 361. also the plea is not good, because it is not shewed, where the land lies, wherein the entrie is alledged, and therefore if the Plaintiffe had denied it, then is there no certain place, from whence the Venue should come, &c. Walter of the Inner Temple, it seemeth that the plea is good. First, this plea although it is but to the writ, yet it is peremptory as other pleas to writs are: see l. 5. E. 4. fol. ——— as to the conclusion of the plea, it is but matter of form, which the Clark ought to amend, and therefore upon your generall demurrer, you shall not take advantage of it, and by the Court, this is but matter of form, and not being alledged for one of the special causes agreed, that notwithstanding the demurrer be special, yet the Court ought to apply the conclusion always as the matter of pleading will bear it, and therefore if a man plead to the Jurisdiction of the Court, and demand judgement of the writ, yet it is good by Newton 7. H. 6. for if the Bar be good, the writ is not maintainable, and it was said by Popham in a case in the Kings Bench 34. Eliz. that one, &c. had two issues in one plea. First, if one thing be once repeated in a plea, repetition thereof will supplie all the residue for avoiding infiniteness in repetitions. Secondly, one &c. will serve to supplie the defect in matter of form as here, and as to the Objection that the plea is not good, because no certaintie is shewed where the entrie was; it seems to me the plea therein is good, because here is no need in our case to mention the certainty in the Declaration, for here by our plea we offer two things issuable, viz. the entrie, or not entrie. Secondly, if it be parcel of the premises, or not, and when divers things issuable are specified, it is not necessary to shew the place of any, for it is time enough to shew it in the rejoynder. 3. H. 7. 11. 3. H. 6. 8. 41. E. 3. 8. 10. H. 6. 1. 14. H. 6. 31. And therefore it was agreed in the Kings Bench, that if one pleads in Bar divers matters issuable, the Replication ought not to take issue upon any of them, but leave it to the rejoynder to the intent, that the place may be shewed therein, and so here. Secondly, here a place is sufficiently shewed by awarding of a venire facias, for it is certain enough to shew it to be parcel of the Mannors, as it was resolved in Bailies case Trin. 7. Iac. in the Court of Wards, then by the same reason it is good enough, to shew it to be parcel of all the three Mannors, for the Venue shall come from all, as it shall be to trie the issue of all, and by the demurrer here it is admitted to be parcel of all, and therefore, &c. Thirdly, he said, that the omission of the place is but matter of form, and such a thing is within the Statute of 27. Eliz. and ought to be specially set down, or otherwise the partie who demurreth shall take no advantage thereof, and to prove that it is but matter of form, he vouched the case of Hall and Goodwin in the Kings Bench Hill. 31. Eliz. and he said, that a Replication makes not the plea good, which is evil in matter of substance, and yet a Replication made to a Bar which wanteth a place, maketh the plea good, which proveth it to be but form: also he vouched the case of 34. H. 6. 2. in debt

the

the Defendant pleads the receipt of parcel hanging the writ, and 34. Eliz. in the Kings Bench, between Noy and Middleton, ſuch a plea was in Bar. Stephens, the plea is not good in matter, for the place where the entrie was made after the laſt continuance, ought to be ſhewed, for allwayes the moſt certainty ought to be obſerved for the Venue to ariſe, as 6. H. 7. if Treſpaſs be brought upon the Statute of R. 2. for entring into the Mannor of D. in D. the Venue ſhall come from the Ville, and ſo here if the place be not parcel of any Manors, yet if it lieth in any Towns mentioned in the Declaration, the Venue ſhall come from the Ville, and not from the Mannor, 32. H. 6. 15. three ſeveral places are mentioned, and one pleaded a deed dated at the place aforeſaid, it is not good: alſo here it ſeemeth, if the party will plead, and not demur, the want of place ought to be ſhewed in the rejoynder, as it hath been conceived on the other ſide, but if he will not replie, but demur upon the Bar, the plea in Bar is not good: Trin. 40. Eliz. in B. R. Rot. 1023. an Action of Covenant was brought by a Biſhop of a Leſſee, and no place alledged where the aſſignment was made, and a demurrer thereupon, and adjudged that the plea was not good, and there it was alſo agreed, that it was not matter of form, and ſo here: ſee after. Mich. 7. *Jac.* in the *Exchequer.*

Tanfield chief Baron excepted to the form of an entrie for the King which was, that Poſtea the Juſtices of Aſſiſe Deliberaverunt Tenorem placiti, &c. for by him the Preſidents in the Kings Bench are, quod deliberaverunt recordum prædictum, which as he thought was the beſt, but after upon the view of a Preſident ſhewed, where an exception was taken in Baron Manwoods caſe, upon a writ of error in the Exchequer Chamber after judgement given here, and the entrie then allowed to be good, and upon the view alſo of divers Preſidents ſhewed by Turner Maſter of the pleas, the chief Baron and all the Court agreed, and reſolved, that the entrie of Tenorem placiti, or Tenorem recordi, is as good or better, then recordum prædictum, &c. and therefore nothing was ſpoken to that exception: ſee the Preſident of pleading in Stradling and Morgans caſe Plowden, where it is Tenorem placiti.

Sir *Anthony Aſhleys* caſe.

IT was agreed by all the Court in Sir Anthony Aſhleys caſe, that if the King be intitled to the profits by an outlawry, and after B. aſſigns a debt to the King, and the King had granted the profits which accrued by the outlawry to Aſhley, yet the lands of Aſhley may be extended for this debt, for the King had no intereſt in the land, but only the profits for the outlawry, and therefore it may be extended for debt, per *Curiam*, quære, if ſo for a common perſon.

Ewer againſt *Moil*, Hill. 8. *Jac.* in the *Exchequer.*

THe caſe was this, that a Commiſſion iſſued out of the Chancery to Baron Sotherton and others, and this was in 7. Iac. to inquire what lands and Tenements the late Prior of Biſter in Com. Oxon. had in Caversfield, in the County of Bucks, and to inquire if a rent reſerved upon a grant made to Banbury of the lands of the Priory be arrere, or not, and by vertue thereof, the Jury of the County of Bucks found that the Church of Biſter in the County of Oxon. was founded by the name of the Church of Saint Mary, and Saint Egbert, and that Thomas Banbury Prior in the year, &c. made a leaſe to one Banbury of

Hill. 8. *Jac.* in the *Fxche-quer.*

the moitie of the Mannor of Caversfield rendring rent, and that this rent was arrear, and thereupon an Inquiſition returned, and a ſcire facias iſſued to Moil, who occupied the land, to ſhew cauſe wherefore the King ſhould not have this land, whereupon he pleaded as Ter-tenant, and upon this plea the Kings Attorney demurred, but it was miſentred as ſee hereafter, but for divers great imperfections aſwell in the Kings Commiſſion as otherwiſe, the Defendant ought to have judgement as all the Barons agreed, as by the arguments of every Baron upon mature deliberation appeareth, but for the reaſons of the Barons to the exceptions taken by the Counſel, ſee after for they are very good. Bromley Puiſne Baron, whereas the Inquiſition purporteth, that the Jurors in the County of Bucks, have found a foundation of a Priory in the County of Oxon. that is not good by courſe of Law, for if a thing be local, the Jurors of another County cannot finde it, and here the Commiſſion giveth power only to inquire of things in the County of Bucks, and he vouched Plowden in the Earl of Leiceſters caſe upon a Commiſſion, directed to White Lord and Maior &c. alſo the Inquiſition is, that Thomas Banbury Nuper Prior was ſeiſed, and made a conveyance: as is affirmed, that is not good: alſo the word Nuper may be intended a 100. years before, and ſo no certainty as appears in Wrotheſly and Adams caſe in Plowden: Altham 2d. Baron, there are three faults in the Commiſſion. Firſt, is to inquire of a Mannor and lands of the late Priory of Biſter in Caversfield, in the County of Bucks, and by theſe words, no power is given to inquire of any thing concerning the Priory which is in the County of Oxon. and the words in the County of Bucks do refer to all the ſentence precedent, and not to the word Caversfield only, 19 E. 4. fo. 16 7. H. 6. fo. 8. if A. B. and C. be inſula de D. it ſhall be conſtrued that the word inſula hath reference to all the three Towns, but if it were in A. B. and C. inſula, and not in inſula, then it is otherwiſe, a Commiſſion to inquire of lands of the Prior of Biſter is evil without queſtion where Biſter is, and he ſaid that this may be proved by Pages caſe Cook lib. 5. alſo the Commiſſion doth not propoſe any end wherefore the Jury ſhould be, but generally to inquire of the lands of the Priory at the time of the diſſolution, ſo that it may be certified to the King by the Inquiſition: the firſt fault which is found is, that the Priory was founded by the name of the Church of Saint Mary, and Saint Egbert without ſaying the Prior and Covent of &c. and without finding of the place of the foundation, viz. Biſter, and this cannot be without alligument of the place of the foundation, viz. Biſter: alſo the finding is, that one Thomas Banbury then Prior as is affirmed, made a feofment &c. and this is not good, becauſe it ought to be abſolutely found, or otherwiſe it is not material: alſo the intent of the feofment is found to be made by the Prior, but no livery is found thereupon, as it ought, although that livery ſhall be intended in the caſe of a feofment pleaded by a common perſon, yet it ought to be found expreſſly, in the caſe of a Corporation, and the finding here, and that by vertue whereof he was ſeiſed, as the Law requireth doth not aide the caſe. Snig Baron, it ſeems to me, that this Commiſſion was only to inform, if the matter had been ſufficient to us to give judgement to the King, but here being to intitle, &c. it is not good, the Commiſſion is to inquire for the King of the lands of the Prior, and this meerly incertain without ſaying certainly of what Prior, and therefore they have no power to inquire of the lands of the Priory: alſo the Jury of the County of Bucks, cannot inquire of the name of the foundation of a Corporation in the County of Oxon. for the foundation is matter Local, but it ſeems to me here, that the finding by vertue whereof he was ſeiſed pro ut, &c. ſhall be intended that livery was made being by a verdict. Tanfield chief Baron, here is not any demurrer being miſ-entred, and therefore we have power to proceed to any matter in Law, for the purpoſe in this caſe was, that whereas the Statute of the 27. H. 8. of leſſer Monaſteries under the yearly value of 200. l. giveth them to the King, and this Mannor of Caversfield within this Statute is to be ſeiſed as is pretended in this caſe, whereupon this Commiſſion

iſſued

iſſued to inform the King of this Mannor as parcel of theſe Revenues, for I deny that it is an office of intitling, it is only an office of inſtruction, for the Statute of 27. H. 8. diſſolves the ſmaller Monaſteries, and veſts them actually in the King, and this is the difference from the Statute of the 31. H. 8. for this Statute is only an Act to Abolish the lands of diſſolved Monaſteries, and therefore this Statute is only to inform, for the Statute of 27. H. 8. had intitled the King, and he ſaid, that the land ſhall be in the King without office, ſo that it being but an office of inſtruction, this may be good, notwithſtanding divers incertainties therein contained; but the plain and apparant fault herein is, becauſe it is not to inquire what lands the Prior had at the time of the diſſolution, as it ought to be, for the words are to inquire what lands the late Prior had, but it ſeems to me in this caſe, that the Jurors of the County of Bucks, may inquire of the foundation in another County without doubt, this being but to inform and not to intitle, and this is not alike miſchief to the party, for otherwiſe all Commiſſions to inform would be quaſhed, and I have ſeen a Record in this Court, where a man of a good family was found to be the Kings Villain regardant to a Mannor in Norfolk, and this was done by a Jury in Suffolk, and therefore in ſuch caſes (God defend) but that a Jury may finde a matter local in another County: alſo a groſs defect is in the Inquiſition, viz. becauſe it doth not mention that the Mannor of Caversfield came to the King by the Statute of the 27. H. 8. but that the Priory came to the King by that Statute, and doth not ſay, that this Mannor was part of the poſſeſſions of the Priory at the time of diſſolution, and for theſe laſt matters it is apparent, that the Inquiſition, and Commiſſion are vitious, although it be not proper for us, as the caſe is to adjudge it, for here is no demurrer joyned, for the demurrer is joyned, as if it were upon an Information of intruſion, and here is no intruſion laid to the charge of the Defendant, and yet after the plea pleaded by Moil, the Attorney prayed that he may be convicted of the intruſion, and Moil ſaid, that he ought to ſhew matter ſufficient, whereupon he upon the intruſion aforeſaid ought to be convicted, ſo that a thing is demanded of us to give our judgement in which is not in queſtion before us, and therefore no judgement at all may be given here, wherefore it is not needful for us to diſpute other matters in the caſe, and as to the queſtions in Law, which were argued by George Crook, and others, Tanfield chief Baron, nor Altham ſpoke not at all, becauſe they might come before them again to be adjudged upon a better office: but Bromley and Snig Barons ſpoke to the matters in Law, and their opinions were as follow, and upon the plea of Moil the caſe was this, that the Tenant pleaded proteſtando, that the Priory of Biſter was not founded by the name of the Priory of Saint Mary, and Saint Egbert of *Biſter*, as the inquiſition ſuppoſeth, for plea he ſaith; that one Thomas Banbury Prior of the Church of Saint Mary, and Saint Egbert of Biſter infeoffed him of the Mannor of Caversfield by the name of the Poſſeſſion of his Mannor of *Caversfield*, as alſo by the name of all his lands and Tenements in *Caversfield*, and that the ſaid feoffment was made by the name of the Prior of Saint Egbert of Biſter, and that it was known alſwel by the name of Saint Egbert as Saint Mary, and that the Mannor of Caversfield was well known by the name of the Poſſeſſion of the Mannor of *Caversfield*, and that the Prior had no other land in *Caversfield*, and ſhewed alſo, that there is another in Caversfield, which is called Langſtons Mannor, the which heretofore was the Priors, and allotted as a Poſſeſſion of a Mannor, in the ſame Mannor of Caversfields, and thoſe and other circumſtances he uſed in his plea to the intent to ſhew, that all the land of the Prior ſhall paſs to him, and he ſhewed that this Mannor ſold to him was known by the name of Langſtons Mannor. Bromley Baron, the Corporation is miſ-named in the Grant, becauſe it is a thing material, viz. the omiſſion of the word Saint Mary, for the name of aſſent in a body politick is, as the name of Baptiſme in a body natural, and the name of Baptiſme cannot be miſ-named, as it appears 3. H. 6. and 1. H. 7. if Iohn by the name of Thomas make an Obligation

Hill. 8. *Jacobi* in the *Exchequer.*

Hill. 8. *Jac.* in the *Exchequer.*

ligation this ſhall not binde him if he doth not admit it, and therefore it ſhall not conclude the King, ſee the 11. Eliz. Dyer 279. where in ſome caſes the eſtate ſhall paſs by livery and ſeiſin, by what name ſoever it be made, but a Corporation cannot paſs an eſtate from them, but by Charter, and it may be conceived, that the founder intended two things; the one was Religion, or more properly ſuperſtition, the other was, that it may remain to poſterity, as a Monument of the piety of his Anceſtors, and then if the name ſhould be altered, the remembrance would alſo decay, and therefore what name ſoever is firſt impoſed, ought alwayes to be obſerved: and that the omiſſion of Saint is material, and he vouched Eaton Colledge caſe, 3. and 4. Ma. Dyer and 35. H. 6. 31. the caſe of the foundation of Saint Peter and Paul &c. but he agreed the caſe in 11. Eliz. Dyer 278. that omiſſion of the word undivided is not prejudicial, becauſe no material variance. Secondly, it ſeemed, that all the Priors Mannor of Caverſted paſſed by this grant, for by 20. H. 6. and 22. H. 6. it appears, that a feofment of 20. Acres by the name of a Mannor is good, and 6. and 7. E. 6. Dyer, if a man grant his Mannor in S. containing 10. Acres, yet if it contain 20. Acres it is good, and the word Omnia, greatly inforceth the caſe as it ſeemeth, wherefore, &c. Snig Baron ſaid, that the miſ-naming is a material variance which avoids the grant, alſo it ſeemeth, that Omnia alia ſhall not be intended to refer to more then was granted by the other words, except there were other lands beſides the Mannor, and therefore he thought that only a Moity of the Priors Mannor paſſed; ſuper totam materiam.

Sir *Henry Browns* caſe before.

HObert Attorney general, it ſeems to me that the plea is not good for divers cauſes: ſee the beginning before, fol.——he ſaid, that firſt every iſſuable plea ought to expreſs a place, but if the iſſue be triable by the Record, or witneſſes, a place is not neceſſary, 11. H. 7. fo. 1. if there be no place, there is no plea, and therefore if it be beyond the Sea it is no plea. Secondly, in our caſe there is no place alledged from whence the venue ſhould come to trie the entrie in this caſe to be of all the premiſes, for it is to trie the entrie, but in one particular parcel, but I agree as it hath been ſaid of the other part, if the entry had been alledged to be in the premiſes, then the venue ſhall come from all the premiſes, for here the plea of the entrie pleaded by the Defendant is double, and yet it is good, becauſe of neceſſitie it cannot be otherwiſe intended in this caſe, but I cannot plead in this caſe, that I have not entred into two Cloſes parcel of the premiſes, for that is Negative preignans as is in 9 H. 6. fo. 44. in debt upon a bond where the Defendant was bound to require a houſe, the Defendant ſaid, that A. by the command of the Plantiffe diſturbed him, the Plantiffe ſhall not be admitted to replie that A. did not diſturb him by his command, but by proteſtation that A. did not diſturb him, for plea that the Plantiffe did not command him, &c. 6. H. 6, fo. 9. in a writ of entrie the Tenant pleads, that the demandant confirmed after the laſt continuance, the demandant ſhall not ſay, that he did not confirm after the laſt continuance, 5. E. 3. fo. 1 in a per quæ ſervitia of the grant to the husband and wife, the Defendant ſaid, that the wife releaſed while ſhe was ſole, the other cannot replie that ſhe did not releaſe when ſhe was ſole, but ought to deny the deed: and ſo in our caſe if you will ſay by proteſtation, that the place where the entrie is ſuppoſed is not parcel, &c. for plea, that you have not entred after the laſt continuance, then the iſſue ought to be joyned, if we pleaſe or not, and this ſhall not have any reference to the premiſes, but only to the two Cloſes, and then the venue ſhall come from the two Cloſes; wherefore, &c. alſo by this plea ſo uncertain the Plantiffe is prejudiced, for admit, that in this caſe Hawkins the Defendant had reentred before the day of niſi prius, this had made our writ good again, as appears

pears by 26. H. 8. fo. 10. and 36. H 6. and 8. H. 7. and then if here the Defendant will say that the Plaintiff had entred before the issue, now it shall not be touching the premisses; Also peradventure if he will assign the place, this may fall out to be in another County, then where the Action was brought, for so it may be, and yet parcell of the premisses, and so he may give us cause to demur. Also to say cleerely that the Plaintiff had entred, &c. is not good. for it ought to be that the Plaintif also expelled or amoved the Defendant, as appears in the book of Entries, *Tit.* Debt or Lease, fo. 11. or 12. and fo. 175. B. also here the Plea is double to say in one close called Well Close, and this is matter of substance, whereof we may take advantage notwithstanding this general Demurrer. And also he saith it is parcell of the tenements mentioned in the Declaration, & this may be, and yet never parcell of the thing whereof the Action is brought, for there are other Writs therein comprehended within the pernosme: And as to the objection of Serjeant Dodderidge, that here is a discontinuance because the Plea is not continued by the Judge of Nisi prius into this Court here, it seemeth that this needs not, notwithstanding that it be a collaterall Plea in this Court, in *Trin.* Term at the Assises, but it is that the parties aforesaid do attend in Octab. Mich. and the continuing untill the Assises is but with a Nisi prius, &c. and by expresse words the the Parties have day to attend to hear judgement, and at the Assises to try the issue, and this is a sufficient continuance: and as to that the Judges of Nisi prius ought upon this Plea to discharge the Jury, to that it seemeth that the relinquishing of the issue joyned, and the acceptance of this new Plea is a discharge in Law. Also the Judges of Nisi prius have no power to give day in the Court here to the Parties, for the Court here is to appoint the day in the book of the other part, & 37. H. 6. fo. 2. is only that the Judgs of Nisi prius give to the parties their day, viz. the ordinary day, and not another day, and the cases tit. Voucher, and tit. Journ. in Fitz. cited of the other part are, where the Plea is to be put in another Court, as Durham, &c. where the parties have no day before, and there a day ought to be given, but that is apparantly different from our case. Nichols Serjeant to the contrary, admit that the Action had been brought of the Mannor of D. only, and the entry had been alledged in parcell as here it is, then it had been good, see the Book of Entries tit. Debt or Lease, 11. or 12. accordingly, and by the same reasons it seemeth, the Action being brought for the ejectment of three Mannors, & the entry was pleaded to be in one Close, parcell of the Tenements, and good, for the venue shall come from all, as well from one Close, as from the other. Also here the entry is alledged to be in parcell of the Tenements, and not of the premisses, and so the venue for the tryall ought to be from the three Towns where the odde Acres lye, and not from the Mannor; also and by a reasonable intendment it may be conceived that the place where &c. lyeth in all the three Towns, 36. H. 6. fo. 17. the Defendant saith, that the place where &c. is parcell of the Mannor of B. that he intitled himself unto, he needs not shew where the Mannor lyeth, and yet it shall be intended in the same County, and although that in such case it is said to be shewed in certain, by the Book in 6. E. 6. Dyer fo. 76. yet this doth not prove that it ought to be of necessity, and here by the shewing of the Plaintiff he had confest the matter of fact, which is an entry into parcell of the Premisses, and by consequence he falsified his Writ. for if he confesse that he had entred into any parcell thereof whereof he brought his Action, he had falsified his Writ cleerely, & he vouched 21. H. 6 fo. 8. and 6. Eliz. Dyer 226. in a Ejectione firme against Nevell and others, it is said that by a Demurrer to such a Plea, the Plaintiff had confessed the Entry, but otherwise it should be if he had imparled, see Bowld and Mullinexes case in Dyer fo. 14. for the shewing of a place, &c. and l. 5 *E.* 4. fo. 138. an Executor pleads fully administred, and at the Nisi prius he pleads that the Plaintiff recovered part of the Debt in D. after the last continuance, and a good Plea, although it be not shewed in what County D. is: Also it seemeth that day ought to be given in this Plea, or otherwise it is a discon-

Hill. 8. *Jac.* in the *Exchequer*

Hill. 8. *Jac.* in the *Exchequer.*

diſcontinuance, for the day given upon the Roll is to hear judgement upon the verdict, and this plea is Collateral, wherefore, &c. and he vouched 10. H. 7. fo. 27 and 7. E. 3. fo 338. by Herl, where a difference was taken when a day in Bank ſhall be given, and when not, and he vouched 4. and 5. Eliz. Dyer 218. where Fitz. Juſtice gave day in Bank. Tanfield chief Baron, true it is, that if it be in an Aſſiſe which commenceth originally before the Judge of Aſſiſe he may give day. Nichols alſo vouched 33. H. 6. and 11. E. 4. fo. 13. Hobert Attorney general, the demurrer doth not confeſs the plea when it is inſufficient, but if upon the demurrer the plea be adjudged ſufficient, then the fact is confeſſed, for the demurrer only confeſſeth the matter of the plea conditionally, viz. if it be good in the matter of the caſe, in 6. Eliz. Dyer 226. the Plaintiffe conceived, that the plea there ought not to be pleaded in an ejectment after the laſt continuance, and did not demur for the form, and a demurrer doth not confeſs the plea good, although that the matter is true, and the Book in 21. H. 6. doth not preſve againſt me, for that was of an actual confeſſion, but in 37. H. 6. the iſſue joyned was, if he who prayes to be received, may plead the entrie of the demandant after the laſt continuance, and the cauſe of the demurrer there, was only if he could plead that plea or not, becauſe it appears not, if he had any thing in reverſion or no, and ſo it ſeemeth, that we might have demurred ſpecially, and this had been no confeſſion, and therefore the general demurrer ſhall not prejudice us, for the matter of confeſſion. Bromley Puiſne Baron, it ſeemeth the plea is not good, becauſe a place is not aſſigned in certain in what Town the entrie is, divers Towns being alledged, it ſeemeth that it is no diſcontinuance, for there needs no ſpecial day to be given, but the day of return of the niſi prius, for they cannot give any day being delegate only to a ſpecial purpoſe, and it ſeems to me, that the demurrer doth not confeſs the plea of the Defendant, but conditionally, viz. if the plea fall out to be good, for otherwiſe the Plaintiffe ſhall be outed to take advantage of a bad plea, and ſo upon the whole matter, it ſeems that judgement ſhall be given in the ejectione firme for the Plaintiffe. Altham ſecond Baron, to the ſame purpoſe, there needs no ſpecial day to be given by the Judge of niſi prius, although that it be upon a Collateral matter, or plea, for by the record in this Court a day is given to the Jurors conditionally, viz. if the Juſtices of niſi prius at the Aſſiſes do not come, &c. but to the parties it is given abſolutely: ſee 6. Aſſiſes pla. 7. and L. 5. E. 4. fo. 2, 3, and 4. where there are ſeveral caſes to this purpoſe: ſee 9. E. 3. 21. H. 6. fo. 10. if the Defendant make default, at niſi prius, a new diſtreſs ſhall iſſue to the ſame Jurors to be here in Bank, and 3. H. 6. fo. 8. and 9. if a man appear, and plead, he ſhall never take advantage of any diſcontinuance: Alſo it ſeemeth that the plea is not good, and to ſay, that the word Tenementorum refers only to the odde acres, and not to the Mannor, it ſeemeth, that it refers to all: but if it ſhall be taken to refer only to the odde Acres, yet this is not good, and this is proved by the Book in L. 5. E. 4. fo. 110. for a plea to the writ, ought to be alwayes certain, and this caſe alſo anſwereth, that which hath been ſaid, that the demurrer confeſſeth the matter againſt the Plaintiffe, for I ſay if you plead a releaſe in Bar of a debt, and ſhew no place where the releaſe was made, this demurrer is no confeſſion of the releaſe, except that the cauſe of the demurrer fall out againſt me, wherefore in reſpect that the plea is not good, and is peremptory to the Defendant, as other pleas to the writs are, for this cauſe I conceive Judgement ſhall be given for the Plaintiffe. Snig Baron accordingly, that the plea is not good, for the not ſhewing of a place certain wherein the entrie was, as by the matter of diſcontinuance, it ſeemeth that the day of niſi prius is all one with the day in Bank, and therefore there needs no day to be given, and for that the death of any of the parties after the verdict, and before the day in Bank ſhall not ſtay the judgement, the Books which were cited on the other parts are different from our caſe, for there the ſuit was adjourned into another Court, and the Courts in the Country are not as the Courts here, and therefore it was neceſſary,

ceſſary, that in ſuch caſes a day ought to be given: for the manner of pleading we ought to give judgement againſt him who pleads the plea, notwithſtanding the matter admitted by the Plantiffe, wherefore judgement ſhall be given for the Plantiffe. Tanfield chief Baron accordingly, the plea whereupon the iſſue was joyned, was for three Mannors and lands in three Towns, and entrie is alledged to be in two Cloſes called &c. parcel of the premiſes, in Bar of the Action, if the Defendant in lieu of not guiltie plead an affirmative plea, and at niſi prius he pleads another plea, then the entrie ought to be, that the Defendant relicta verificatione &c. but in our caſe ſuch an entrie needs not; the plea here ought to be more certain then others, for two reaſons. Firſt, it is pleaded in abatement of the writ. Secondly, it is in delay of the Plantiffe, and to which no rejoynder can be made, as to the plea it ſeemeth this is not good, for by 10. H. 7. fo. 16. a quare impedit was brought by an Adminiſtrator of a grantee of a next avoidance, and ſhewed that the Biſhop of *Sarum* granted Adminiſtration to him, the Defendant ſaith, that the inteſtate had bona notabilia in divers Dioceſſes, and ſo the Adminiſtration void, and ſhewed in what Dioceſſes the goods were, but ſhewed no place where they were, and therefore it was adjudged, that the plea was not good, becauſe he did not ſhew a place &c. ſee 2. R. 3. and 5. H. 7. accordingly, and this plea ſhall not be amended by a rejoynder, as is 21. H. 7. alſo to ſay parcel of the premiſes, this cannot be intended, that parcel of three Mannors, or of the three Towns in certain, and therefore the plea cannot be good, becauſe there is no place from whence the venue ſhould come, and it is inconvenient, that the venue ſhould come from all, if the place where, &c. lies but in one Town, for as it appears in Arundels caſe; Cook lib. 6. if a Mannor be alledged to be within a Town, the venue ſhall come from the Town, becauſe it is a place more certain: as to the general demurrer, that the plea aforeſaid, is leſſe ſufficient in Law, &c. in 18. E. 4. it appears, that in debt upon an Obligation, the Plantiffe doth not ſhew a place where the Obligation &c. and the Defendant confeſſed the Action, yet notwithſtanding this fault, Judgement ought to be given againſt the Defendant, but this differeth from our caſe, becauſe here is an expreſs confeſſion, and in our caſe here is not: alſo here needs not to be ſhewed any ſpecial cauſe of demurrer, but advantage may be taken well enough upon the general demurrer, but if the demurrer were, that the plea amounted to the general iſſue only, there ought to be ſhewed a ſpecial cauſe, or otherwiſe no advantage to be taken, and he cited the agreement of ſeven Judges, to be at Serjeants Inne in Fleetſtreet, this Term in a writ of Error in Dickenſons caſe, the caſe intended was between White and Prieſt, parties in an Action upon Trover and converſion, and the Record thereof is in the Kings Bench, Trin. 7. Jac. Rot. 843. as to the matter in Law, touching the diſcontinuance for want of a day given by the Judge of niſi prius, it ſeemeth there is no diſcontinuance in this caſe, for there needs not to be any day given as our caſe is, yet in ſome caſe the Judge of niſi prius ought to give day, but that ſhall not be a new day, but only the day within contained, and that but in ſpecial caſes, viz. if the iſſue be joyned, and at the ſhewing of the evidence there is a demurrer, here the Judge giveth to the party the day within contained, as it appears in 10 H. 8. Rot. 835. and Hill. 11. H. 8 accordingly in the Common Pleas, but Hill. 36. Eliz Rot. 448. upon nonſuit at the Aſſiſes no day given, ſo if the party confeſs the Action, and ſo if there be a bill of exceptions, yet no day ſhall be given; Hill. 38. Eliz. Rot. 331. in the Kings Bench, but peradventure, it will be ſaid, that theſe Authorities do not match with our caſe, becauſe it is upon a material plea, but I ſay it is all one, and therefore in caſe of a releaſe pleaded after the laſt continuance this is recorded, and yet no day given as appears Hill. 4. H. 8. Rot. 906. in the Common Pleas, and this was upon a new and Collateral matter, as our caſe is: Trin. 20. H. 8. Rot. 247. or 2447. upon an Arbitrament pleaded, and he vouched divers other precedents upon the ſame point: Trin. 3. H. 8. 446. or 466.

Hill. 8. *Jac.* in the *Exchequer.*

Hill. 8. *Jac.* in the *Exchequer.*

and 14 H. 8. Rot. and 11. H. 8. Rot. 446. and Mich. 31. H. 6. Rot. 141. and. Hill. 33. H. 6. Nota, that here it was admitted without any doubt, that an Ejectione firmæ lyeth of a Manno, although it was ſaid at the Bar, that Williams Juſtice was of opinion to the contrary the laſt aſſiſes at Norwich: and ſo by all, Judgement was entred for the Plaintiff immediately, and a Writ of Error was brought, but never proſecuted, for the Counteſſe of Pembrook had day given to remove her goods out of the Manſion Houſe, and ſo ſhe relinquiſhed the poſſeſſion of all the premiſſes, as I heard.

Treſpaſſe againſt *Gibſon* and others.

VPon evidence to a Jury, an Action of Treſpaſs againſt Gibſon and others, it appears that the Defendant was Deputy to the Duke of Lenox, upon his Patent of Ulnage, and that by vertue thereof, he pretended to make ſearch of certaine Stuffs called new Drapery which the Plaintiff were carrying to London, and at the Town of Ware two or three ſtrangers affirming themſelves to be ſervants of the ſaid Gibſon, did unpack the ſaid Drapery, and laid it in the dirt, whereby the Plaintifs were hindred of the ſale, &c. And in this caſe it was agreed, if they as Servants to Gibſon without his precedent appointment doe ſeiſe the Plaintifs goods, and the ſaid Gibſon approve them to be ſeiſed, although his Servants without his conſent abuſe the goods, yet Gibſon ſhall be Treſpaſſer ab initio. Alſo they agreed without any ſcruple, although that the firſt ſeiſure of theſe goods be admitted to be lawfull as by the pretence or license in Law, yet the abuſing of them makes the originall ſeiſure to be wrongfull, and treſpaſs lyeth, and therefore in this caſe, although it were not proved that Gibſon himſelf appointed, or was privy to the miſuſing aforeſaid, yet he ſhall be charged in dammages, and ſo he was for ſeverall ſeiſures in an Action to 32. pounds, viz. 30. l. for one ſeiſure, and 2. l. for another ſeiſure, and ſo ſeverall dammages for ſeverall Treſpaſſes in one Action, and although that by the abuſing of an Authority or licence in facto a man ſhall not be a Treſpaſſor ab initio: but an Action upon the Caſe lyeth, yet for miſuſing of an Authority in Law, Treſpaſs lyeth ab initio, for if he who hath power to ſeiſe, Eſtrayes, will labour the Eſtray, a Treſpas lyeth for the ſeiſing thereof, Bagſhews caſe, Hill. 4. Jacobi in the Kings Bench.

Bromleys Caſe, Hill. 8. Jacobi in the Exchequer.

HUtton Serjeant came to the Bar, and ſhewed that one Bromley had before this time made a Leaſe for years in County Palatine of Durham, of certaine Cole-mines in that County, rendring rent 100. l. per annum, which rent is arreare for divers years, and that Bromley became outlawed here in the Common Pleas for debt at the Suit of Cullamour a Merchant, and that the King had granted this debt due upon this Leaſe for years as forfeited for outlawry unto him: And Hutton for the Biſhop ſaid, that it belongs to him, becauſe he had all the goods of men outlawed within his County, and if this debt belongs to the King, or the Biſhop, it was the doubt, the party being outlawed in the County of Northumberland which is out of the County Palatine of Durham: Tanfield chief Baron ſaid that the debt ſhall follow the perſon, and he ſaid that in 21. Eliz. Vere and Jefferies caſe, it was a queſtion, if debt upon a Bond ſhall be forfeited to him, who had ſuch a privilege where the Bond is, and he ſaid that in this caſe

it

it was reſolved that he ſhall have the Bond and debt (who had Bona utlagatorum) where the Bond is, and ſo it was reſolved as he ſaid in a Caſe referred out of the Realm of Ireland, but here is a debt which accrueth by reaſon of a reall contract of goods in the County Palatine, and he who is Debtor is the party outlawed, but not in the County Palatine of Durham: And Hutton Serjeant ſaid, that he had the Rolle of a Caſe in this Court in the time of E. 3 that the Biſhop of Durham was allowed a debt in a more ſtrong caſe then this is, for there a Creditor was outlawed in London, and his Bond was alſo in London, and the Creditor was only an Inhabitant within the County Palatine, yet the Biſhop was allowed this debt: Curia put in your Claime, and we will allow that which is reaſonable, and it was adjourned. Hill. 8. *Jac.* in the *Exchequer*

Iſabell Forteſcues caſe.

VPon a motion it was ſhewed by Coventry, that upon a penalty impoſed upon Iſabell Forteſcue for her Recuſancy, and Inquiſition iſſued, and it was found by the Jury that the ſaid Iſabell was ſeiſed of no Lands, but thoſe mentioned in a Schedule to the Inquiſition annexed, and then expreſſeth divers particulars in the Schedule, without expreſſe finding that ſhe was ſeiſed of them, this is no good Inquiſition, nor finding of any ſeiſin, by the whole Court: And ſo by the Court, where an Inquiſition or Schedule ſaith, that the ſaid Iſabell was ſeiſed of the Mannor of D. as by information, this is not good cleerely, for it may be ſhe is ſeiſed without information, but where it was ſhewed that upon this inſufficient Inquiſition, divers ſummes of money were levied, and paid into the Kings Coffers, that this may be reſtored: The Court anſwered, it doth not appear, but that the King may by a new Inquiſition have this money juſtly, therefore it ſhall not be delivered out of the Kings Coffers, but if you have good matter in equity to be diſcharged in your Engliſh Bill, you ſhall have reſtitution, &c.

Brockenburies caſe.

THe Kings Debtor ſuffered A. to manure his Land, and therefore the Sheriff ſeiſed the goods of A. for this debt, whereupon A. (to the intent to have his goods again) paid the Fees to the Sheriff, and made a Bond to the King to pay the Summe due: And now upon a motion and Affidavit that the Debtor himſelf had ſufficient to ſatisfie the debt due, it was ordered by the Court, that the Fees taken by the Sheriff ſhall be reſtored to A. and that the Bond remaine in the Office here, and if this debt can be levied of the lands, or goods of the Debtor, the Bond ſhall be delivered to A. but if it fall out that it cannot be levied of the Debtor, then the King ſhall reſort to A. upon this Bond, and he ſhall have the aſſiſtance of this Court for his reliefe againſt the ſaid Brokenbury the Debtor.

Robert Beekets caſe touching Recuſancy.

RObert Becket ſeiſed of divers Lands in Fee in the County of Cornwall, upon an Indictment in 28. Eliz. was convicted of Recuſancy for 10. moneths next before, and died in 1. Jacobi, and no other conviction ever was, and yet

Hill. 8. *Jac.* in the *Exchequer.*

de facto he continued a Recuſant untill his death, and his Land, viz. two parts thereof were ſeiſed in his life, and the King anſwered of 200. l. thereof, which incurred in the moneths contained in the Indictment, and now a Writ is iſſued which ſuppoſeth the ſaid Robert to be indebted to the King in 20. l. for every moneth he lived after 28. *Eliz.* untill 1. Jacobi for his Recuſancy, which amounted to 4000. l. which Writ alſo commands to enquire what Lands the ſaid Robert Becket had at the time of his death, and thereupon it was found that he had divers Lands, &c. and upon a Scire facias to the Terretenants to ſhew cauſe wherefore two parts of the Lands of the ſaid Robert Becket ſhould not now be ſeiſed for the debt of the Recuſant aforeſaid, one Henry Becket as Terretenant, or Tenant of the Premiſſes pleaded that the King is ſatisfied of all the 20. l. and for all the moneths that the ſaid Robert was convicted to be a Recuſant, and he vouched the Conſtat thereof under the hand of the Deputy of the Pipe Office, and for the reſidue he ſaid that by 28. Eliz. cap. 6. it is amongſt other things enacted, that if any perſon which hath not repaired, or ſhall not repaire to ſome Church, Chappell, or uſuall place of Common Prayer, but hath forborne, or ſhall forbear the ſame, contrary to the Tenor of the Statute of 23. Eliz. cap. 1. and hath been heretofore convicted for ſuch offence, ſhall forfeit, &c. provided that if he hath made ſubmiſſion, and been conformable according to the true meaning of the ſaid Statute, or ſhall fortune to dye, that then no forfeiture of 20. l. for any moneth, or for ſeiſure of the Lands of the ſame offender, from and after ſuch ſubmiſſion and conformity, or death, and full ſatisfaction of all the arrerages of 20. l. monethly before ſuch ſeiſure due or payable, ſhall enſue, or be continued againſt ſuch Offendor, and traverſeth without that, that there is any Record beſides this Writ, to charge the ſaid Robert Becket deceaſed, of or for the ſumme of 4000. l. towards our ſaid Lord the King, &c. and ſo prayeth to be diſcharged thereof. Upon which Plea the Kings Atturney Generall demurred, and Coventry argued that the Plea is good, & he ſaid that there are three Points to be conſidered; Firſt, that if a man be convicted of Recuſancy in 28. Eliz. for 10. moneths then paſſed, and de facto continueth a Recuſant untill his death in 1. Jac. without other conviction, if now the King can claim 20. l. a moneth for more moneths then are contained in the Indictment whereupon he is convicted. Secondly, admit that the King may have the forfeiture for every moneth, whereof no conviction was as well as if a conviction had been, then if the King can ſeiſe the Lands for the payment thereof after his death, no ſeiſure being had for it in his life, by the Stat. of the 28. Eliz. or if the power of ſeiſure be altogether gone by the death of the Recuſant. Thirdly, admitting that the King ſhall have more then is contained within the Indictment, if the Debt it ſelf be not gone by the death of the Recuſant; To the firſt Point, there is no Preſident to be found that any man convicted before 28. Eliz. was charged to the Payment of more then that which was within the Indictment, and the words of the Statute of 28. Eliz. contained within this Clauſe which provides for the payment due ſince the Conviction, do not inforce any conſtruction to the contrary, and in this Clauſe the words being, (do yet remain unpaid) are not proper words but for a thing payable before this Statute, for ſo many moneths whereof he was convicted of Recuſancy, and the words without any other conviction are to be underſtood for ſo much as was unpaid of that contained in the Indictment, and the laſt Clauſe of this Branch of the Statute hath not the words without any conviction, and the other Clauſe provides that by expreſſe words for the future time, every perſon who ſhall be once convicted ſhall forfeit, &c without other conviction, and it was reſolved Hill. 4. Jacobi in the Kings Bench between Grinſtone and Oliver, that the Statute of 28. Eliz. alters, and adds three things to the Statute of 23. *Eliz.* 1. That all the money due for Recuſancy ſhall be paid into the Exchequer. 2. This limits a time for payment thereof yearly, viz. in the four Terms of the year. 3. This giveth a penalty, viz. power to ſeiſe all the goods, and two parts for non-payment, but

all

all that is only for that which was payable before the conviction, and therefore the words in the Branch which contains our Case, have apt words of construction, that he shall pay all due for the paine of seisure, for 23. Eliz. gives no seisure, but imprisonment if payment be not made within three moneths after judgement, and so in our case Conviction ought to precede the duty: To the second Point it seemeth that the power of seisure within this Statute is gone by the death of the Recusant, for before the Statute of 1. Jacobi the power for seisure was but a penalty, that if the party fail in payment of 20. l a moneth then &c. and in all cases upon penall Laws, if the party die before the penalty inflicted, this shall not be inflicted at all, and that this is but a penalty, he vouched one Grayes case in 1. and 2. Jacobi to be adjudged accordingly: Also the words in this Statute which give the seisure of Land, appointeth a levying to be of the 3. part for the maintenance of the Offendor, his Wife, Children, and Family, and after his death he hath no Wife, so that if it be demanded when the seisin must be, the answer is, then when a third part may be left for his use, which cannot be but in the life of the Recusant: Also it appoints that the seisure ought to be by Processe which ought to be in the life of the party by intendment: Also the Proviso of the Statute of 28. Eli. saith, that if any person shall dye, no seisure shall insue, or be continued, and our case is within those words, for in regard there hath been no seisure in his life, therefore after his death no seisure ought to insue, and the words which purport another semblance of construction, viz. and satisfaction of all arrerages, are to be understood only in case where there was a former seisure, that is in the life of the party, and have reference to the words (to be continued) and that the intent is so, he said that the words are, so that the Heir shall pay no more but so much as the Land was seised for. To the third, it seemeth that in this case the debt it self is gone by the death of the party; At the Common Law, a penalty shall never be recovered against the Heir, except that judgement be given against the Ancestor, and for that see 40. E. 3. Executors 74. and 41. Ass. pl. 15. and 15. Eliz Dyer 322. And also if a Recusant had been convicted upon the Stat. of 23. Eliz. and dyed before judgement, cleerely this forfeiture shall never be charged upon the Heir, for the words are, that a Recusant shall forfeit 20. l. a moneth, and if he doe not pay it, then appoints the recovery by Bill, Plaint, or Information, and this ought to be alwaies in the life of the party, then the Stat. of 28. Eliz. maketh not a new debt or Forfeiture, but gives a penalty for the non-payment of that which was a debt within 23. Eliz. and that the intent of the Stat. of 28. Eli. was but such, this is proved by the Title of the Act, viz. for the more speedy and due execution, &c. 2. It is proved by the first words of the Act, for the avoiding of all delaies, &c. so that it appears, that this Act is but as a penalty meerly: Also he said, that this Stat. of 28. Eliz. dispenceth with the conviction as to the penalty, but doth not take away the Conviction: also he said that conviction without Judgement maketh not a Debt: Also he who is convicted by proclamation, and dieth, is discharged: Also he said that our Case hath been compared to a Debt upon an Obligation, but this is not like, for the Stat. stands not indefinite, but hath reference to 23. for otherwise a Recusant may be doubly charged, that is, upon both the Statutes, for there is no means to recover the Debt but by this Statute of 23. Eliz. See Sir Edward Walgraves case Dyer 231.

Hill. 8. *Jacobi* in the *Exchequer*.

Wentworth and others against *Stanley*.

WEntworth and his Wife, and Rich and his Wife brought an Ejectione firmæ against Stanley, and shewed in their Declaration how one Edward Stanley was seised in Fee, and infeoffed the Earl of Darby & others to the

Hill. 8. *Jac.* in the *Exche-quer.*

the uſe of himſelf for life, the remainder to the uſe of the Plaintiffs wife for 100. years, and died, and the Plaintiffs entred, and the Defendant ejected them &c. and this Feofment was made in 40. Eliz. the Defendant ſaith, that long before one Richard Stanley was ſeiſed in Fee, and gave it to the ſaid Edward Stanley in tail, and that he ſo ſeiſed made a Feofment to the uſes as is alledged, and died, and the Plaintiffs entred, and the Defendant as iſſue of the Feoffor re-entred, and ſo by his pretence he is remitted, whereupon it was demurred; and upon the opening this caſe, the Barons were clear of opinion, that the iſſue in tail is remitted, and came paramount the leaſe, and ſo the leaſe for years is gone: alſo by the chief Baron, and Baron Snig, there needs no Traverſe to be alledged by the Plaintiffs, becauſe it was but of a fee gained in an inſtant by the feofment of a Tenant in tail, and a fee-ſimple gained in an inſtant needeth not to be Traverſed: 5. H. 7. and 2. E. 4. wherefore the Court ſaid, that judgement ought to be given againſt the Plaintiffs, but yet at the deſire of the ſome, the Court gave day to the Counſel on both parts to argue the caſe; at which day came Heneag Finch for the Plaintiffs, and he argued to the matter in Law, and therein he ſaid, that by the feofment of Tenant in tail, the uſe to himſelf for life, the remainder to his daughters for years, without limiting the reſidue of the uſe, that in this caſe the reſidue of the uſe ſhall be in the feoffes, and not in the feoffor, for by him there is a difference between a feofment by him who had a fee with limitation of an uſe as above, and a feofment made by him who derives an eſtate out of a fee, for when Tenant for life, or Tenant in tail makes a feofment, and limits an uſe for part of the eſtate as above, there the reſidue of the iſſue ſhall be to the feoffee, and he vouched Caſtle and Dods caſe adjudged in the Common Pleas, 8. Iac. that if Tenant for life grant over his eſtate without limiting of an uſe, it ſhall be to the uſe of the grantee, more ſtrong here in a tortious act, as our caſe is, but if Tenant in tail will levy a fine with limitation of uſes as above, there the reſidue of the uſe ſhall be to the uſe of the Conuſor. Secondly, admit that the reſidue of the uſe in this caſe ſhall be to the feoffor, yet he ſhall not be remitted to the uſe as it ſeemeth, the words of the Statute of 27. H. 8. are, that ceſtuy que uſe ſhall have like eſtate in the land as he had in the uſe, and therefore it is clear, that the firſt taker of the uſe ſhall not be remitted, as it is reſolved in Amy Townſends caſe in Plowden, and although the words of the Statute mention not heirs or iſſues, yet by the intent of the Statute they are in equal degree, but the Books which are againſt this opinion are two, viz. 33. H. 8. Dyer fo. 51. but there it is not expreſly ſaid, that the iſſue is remitted, but 34. H. 8, *Br.* remitter 49. is expreſly againſt me, but the ſame year in Dyer fo. 54. it is there made a quere, and in Bevils caſe it is only ſaid, that the firſt taker of the uſe cannot be remitted, but of my opinion was Baldwin and Shelley, in 28. H. 8. Dyer 23,24. and in *Sanages* caſe, and 29. H. 8. it is reſolved, that if a man hath land by Act of Parliament, there ſhall be no remitter, and ſo here; wherefore &c. and he ſaid, if Tenant in tail be, the remainder in fee, and Tenant in tail makes a feofment to the uſe of himſelf in tail, the remainder to him in remainder in fee, in this caſe he in the remainder in fee ſhall not be remitted, for then the firſt taker ſhould be remitted: to the pleading, it ſeemeth that the bar is not good; and firſt, the general demurrer here doth not confeſs the matter of fact, no more then in Gawins caſe in 29. H. 8. fo. 40. by Brown, a demurrer upon account in an appeal is no confeſſion of the fact, and in 44. Eliz. in Criſp and Byrons caſe accordingly: ſee Sir Henry Browns caſe before, a good caſe to this purpoſe: then as to the Bar, it ſeems it is not ſufficient, for want of a Traverſe of a ſeiſin in fee, alledged in the feoffor, who was Edward Stanley, for it is a rule that two affirmatives cannot be allowed in a Declaration, and the Bar without Traverſe of that which is mentioned in the Declaration is not good, except there be cauſe of ſome impoſſibilitie, or inconvenience; but yet this is to be underſtood where the affirmatives are expreſs, and not by implication, as in Moiles caſe, if the Defendant in his Bar confeſs

confeſs a fee determinable, he needs not Traverſe the fee alledged by the Plantiffe; but in our caſe here is an allegation made by the words of a fee, to be in the feoffor, and the Bar confeſſeth only, as of a fee gained in an inſtant; but I agree, that if the Bar had been, that the Feoffor was Tenant for years, and made a Feofment; this had been good without Traverſe, but when Tenant in tail makes a Feofment, it ſhall not be intended, that he gained a Fee, becauſe it may be he hath purchaſed the remainder, and thereby had lawfully acquitted it, as an addition to his eſtate: and here the ſaying in the Declaration, that Edward Stanley was ſeiſed in Fee as a thing material, and of neceſſitie, and not ſuperfluous, as the pleading in a Declaration for debt upon an Obligation to ſay, that the Obligor was of full age, or as a Repetition of the writ which needs not be Traverſed, and that it appears in 15. Ed. 4. in ſome caſe a Surpluſage ought to be Traverſed, and 7. Ed. 6. Title Formedon, the Declaration as in our caſe ought to be ſpecial, and 21. H. 7. if a man will maintain debt upon a leaſe, he ought to ſhew how he was intitled to make the leaſe: alſo although that in our caſe, the leaſe for years is the effect of the ſuit, yet I ſay, that the ſeiſin in Fee is the effect of the plea: 27. H. 8. 50. H. 7. 14. in a replevin the Defendant avows as ſeiſed in Fee, the Plantiffe ſayes, that he was ſeiſed for life, and doth Traverſe &c. and 14. and 15. Eliz. was our very caſe, Dyer 312. and there it is ſaid, that the ſure way is to take a Traverſe, as it is alſo ſaid in 11. Eliz. Dyer, alſo where the Bar ſaith, that one R. was ſeiſed in Fee, and gave it to the Father of the Feoffor, and the heirs of his body, he ought to ſay, that the land deſcended to the Feoffor as ſon and heir of the body &c. alſo where the Plantiffe declareth of a leaſe for years made by force of a feofment, made the 30. day of Auguſt 6. *Jac.* the Bar ſaith generally, that the 30. day of Auguſt 6. Iac. the ſaid Feoffor made a Feofment of the ſame land to the ſame perſons &c. but he doth not ſay, that it is one and the ſame with the Feofment mentioned in the Declaration, ſo he anſwereth not our title, and for that cauſe not good, and therefore he prayed Judgement for the Plantiffe. Jones of Lincolns Inne to the contrary, it ſeemeth as to the firſt matter moved, that in this caſe the reſidue of the uſe ſhall reſult back to the Feoffor 34. Eliz. Balfores caſe, if Tenant in tail make a Feofment to the uſe of himſelf for life, without more, by Popham the reſidue of the uſe ſhall be to the Feoffee, for otherwiſe the eſtate for life would be drowned; but otherwiſe it is when a remainder of an uſe is limited to another in Fee, for this ſaves the drowning or confounding of the eſtate for life: as to the point of remitter, it ſeemeth that it is no other, but that Tenant in tail makes a Feofment to the uſe of himſelf, and his heirs, and dies, if the iſſue ſhall be remitted, or not, and as to that he ſaid, that the Statute of 27. H. 8. cap. 10. hath by expreſs words a ſaving of all antient rights, and therefore the antient right of the eſtate tail is ſaved, and therefore the iſſue ſhall be thereunto remitted, and ſo ſhould the Tenant in tail himſelf, if he had not been within the words of the Statute, as it is reſolved in Amy Townſends caſe in Plowden, and the authorities of my part are 33. H. 8. 54. in Dyer expreſly with me, and without any quere, as to the point of remitter, but there it is ſaid, that he ought to avoid the leaſe by entrie, as in our caſe it is pleaded: and as to the pleading, it ſeems there needs no Traverſe. Firſt, becauſe it is matter in Law. Secondly, we have confeſſed a Fee in an inſtant: as to the firſt reaſon, the Declaration is generally of a ſeiſin in Fee, and not expreſly of a Fee-ſimple, and therefore it is matter in Law, 5. H. 7. and 11. H. 7. 21. the Fee not Traverſed: 46 Ed. 3. 24. in Dower the Defendant pleads a ſpecial tail, made by one who was ſeiſed in Fee, the other ſaith, that the Dower had but an eſtate tail at the time of the gift, without Traverſing that he was ſeiſed in Fee, 2. Ed. 4. 11. that a ſeiſin in Fee tail is ſufficient to maintain an allegation of a ſeiſin in Fee: to the ſecond reaſon it is not alledged expreſly, that he was ſeiſed in Fee, but quod cum talis ſeiſitus fuit &c. and 34. H. 6. 48. he needed not in his Declaration to ſay, that he was ſeiſed in Fee;

Hill. 8. *Jac.* in the *Exchequer.*

Paſch.

Hill. 8. *Jac.* in the *Exchequer.*

Pasch. 34. et 35. *Eliz.* Taylors case, if the Plantiffe in a quare impedit alledgeth seisin in Fee, and the Defendant confess the seisin by Usurpation, this is a sufficient confession of the seisin in Fee. Fitzherbert Title Travers 154. a good case to this purpose, and in Moils case cited before on the other side, the Plantiffe doth not mention in his Declaration a seisin in Fee absolute, and the Defendant saith, that A. was seised, and gave to the Plantiffe, as long as A. had issue of his body, he needs not Traverse the absolute Fee, Pasch. 33. Eliz. in the Common Pleas, where there was a stronger case; to the replication the Defendant said, that the Countess of Devon. was seised, and leased for life, the remainder to her self for life, the other saith, that the Countess was seised in tail, and Traverseth that she was not seised in Fee, it is there said, that the Countesses estate in Fee need not to be Traversed, and yet it was there agreed, that in regard it was but matter of form, it was aided by the Statute of Jeofailes, for that was moved in arrest of judgement. Tanfield chief Baron, in the principal case the issue of the Feoffor is remitted without entrie notwithstanding the lease, because it is not in possession, but a lease in remainder, and therefore the title of the Lessees is distrained before entrie by the Defendant, and therefore the Defendant hath not answered the entrie upon the Lessees, for you by your plea destroy the title to this Term which you have allowed them, before they were ever in possession thereof, and the Declaration is, that they were possessed of a Term for years, and that you ejected them, and to this you give no answer upon the matter, for clearly if Tenant in tail make a lease to commence at a day to come, and dieth before the day, this is meerly void by his death, ad quod non fuit responsum: see Plowden in Smith and Stapletons case, for there it is made a quere; and notwithstanding that, Tanfield chief Baron, with the assent of the whole Court pronounced, that judgement should be entred against the Plantiffe immediately, and so it was done.

Bents case.

IN a suit depending in this Court between Bent, and another for a Close, it was ordered, and an Injunction accordingly awarded, that the Defendant should suffer the Plaintiffe to injoy the said Close with the appurtenances until &c. and contrary to this order, the Defendant had put his Cattle into the Close, and thereupon an Attachment issued to answer this contempt, and he said, that he put in his Cattle for a title of Common, and it was ruled, that this was no breach of the Injunction, because the Common was not in question in the Bill, but only the title of the Close, wherefore he was discharged of the contempt, and with the appurtenants doth not include the Common to be taken in the said Close.

Henry Clares case.

UPon a motion made by Serjeant Barker it appeared, that one Henry Clare was indebted to the King, and was seised of a third part of certain lands in Norfolk, and that Mr. Richardson of Lincolns Inne was seised of other two Acres of the same land as Tenant in Common, and the beasts of Mr. Richardson pastured promiscuously upon all the land, and Henry Clare put more Cattle in, and upon proces to levy this debt for the King, the Sheriffe took the Cattle of Mr. Richardson, and sold them, and it was now ruled, that in regard, it was lawful for a Tenant in Common to put in his Cattle upon all the land, and that if they depasture all the grass the other hath no remedy, and for that cause the Sheriffe could not take those Cattle for the debt of another Tenant in Common,

mon, but otherwiſe it would be if the Cattle had been levant, and Couchant upon the land of the Kings debtor, and in the principal caſe the Sheriffe was ordered to reſtore the monie to Richardſon for which they were ſold, and that if they were worth more, yet the Sheriffe ſhould not be charged therewith, except it could be made appear ſome fraud in the ſale, or that ſufficient ſuerties were to pay and diſcharge the dutie, but if my Cattle are levant and Couchant upon the land of the Kings debtor, the King may diſtrain them: damage Feaſant, but he cannot diſtrain them for the debt, by Tanfield chief Baron, and Altham clearly, to which Baron *Bromley* conſented, but Snig ſaid, beware of that. Hill. 8. *Jac.* in the *Exchequer.*

Smith and *Jennings* caſe.

VPon evidence to a Jury, it was ſaid by Tanfield, that if a man make Charter of Feoſment of lands in two Towns, and a Letter of Attorney to make livery, and before livery made by the Attorney, the Feoffor himſelf maketh livery of the land in one Town, this is a Countermand of the Letter of Atturney, and ſo livery cannot be made by the Attorney in the other Town; and quere if the Towns were in ſeveral Counties. Bacon the Kings Solicitor ſaid, that if a man make a Charter of Feoſment of two ſeveral Acres, whereof one is in leaſe for years, and the other in demeaſne, and the Feoffor makes a Letter of Attorney to make livery, and before that be executed, the Feoffor himſelf makes livery, now although that one Acre cannot paſs by this livery, becauſe it is in leaſe, yet this is a Countermand, and revocation of the authoritie given by the Letter of Attorney, for his intent is manifeſt ſo to be, to which Tanfield, and all the Court agreed. Hobert Attorney general ſaid, that in this caſe, although that one of the Acres was in leaſe, yet in regard it appeareth not, that the Leſſee was in actual poſſeſſion, therefore he conceived, that it ſhould be conſtrued, that the Leſſee was not in actual poſſeſſion at the time of the livery made by the Leſſor in the name of all, and in reſpect there was no houſe upon the Acre in Leaſe, it may be intended, that the Leſſee ſhould be in actual poſſeſſion, but for that cauſe he rather conceived, that it ſhould be conſtrued, that the Leſſee was not in poſſeſſion, and ſo the livery might well operate to paſs it. Tanfield, and all the Court denied, that the livery was good to paſs it, although that the Leſſor was in actual poſſeſſion; but where Mr. Atturney alledged further, that before the livery made an Infant had a Term for years in this Acre in leaſe, and that the Feoffor at the time of the livery, was gardian to the Infant, and thereby had a poſſeſſion therein, and therefore the livery made in the other Acre in the name of all, ſhould be good to paſs all, to which the Court agreed, and thereupon directed the Jury to finde the livery, and ſeiſin to be made of all: and in this caſe the Court inclined, that becauſe this Feoffment was made, but ten dayes before, that the Feoffor committed Treaſon, and in aſmuch as it was made to the uſe of the ſon being an Infant, and not upon conſideration of marriage, that therefore the Feoffment ſhould be fraudulent, and void as to the King, but the Atturney general ſaid, that this Feoffment was made in performance of a precedent agreement, viz. it was agreed that the Feoffor ſhould make ſuch a conveyance to an uſe &c. and that the wife of the Feoffor alſo being an Inheritrix, ſhould make ſuch a conveyance of her land which was done accordingly, and upon proofe of this agreement, the Court inclined that it was no fraud, and in this caſe it was ruled by the Court, if parties have matter of evidence by the Records of this Court, they ought to produce the Records themſelves, for Copies of them are not allowable.

It was ſaid by Altham, and agreed by the Court, that if an Information be exhibited for intruding into a Cloſe the 24th. day of March, and for the aſpor-

Hill. 8. *Jac.* in the *Exchequer.*

tation of 9. Cart Loads of Wheat betwixt the 24th. of March, and the firſt of October, the which the Defendant converted &c. and upon not guiltie pleaded the Jury found, that the Defendant took three Cart Loads of the ſaid Corn upon the 24th. day of March, and after before the firſt of October they took alſo three Cart Loads more, and damages were aſſeſſed for all, that here no judgement ſhall be given upon this verdict, for the Information doth not charge the Defendant with the taking of any part upon the 24th. day of &c. and then in regard that damages are intire, judgement can be given for no part of it: ſee *Cook* lib. 5. Plaiſters caſe: but this caſe being moved at another day; Tanfield ſaid, that he having inſpected the Record, he found the verdict inſufficient for another cauſe, becauſe the Jury found, that as to one Cart Load of Wheat to the value of 20. l. the Defendant was guiltie, and doth not mention to what damage, viz. to the damage of 100. s. or otherwiſe, and by him ad valentiam is not ſufficient, without ſhewing alſo to what damage; and for that cauſe, by him a venire facias de novo, ought to be awarded, and ſo it was done by the Court.

Edwards caſe.

EDwards caſe was, that an erroneous judgement was given in a Coppihold Court, where the King was Lord, and this was in a Formedon in remainder, and it was moved now by Serjeant Harris, if the partie againſt whom it was given may ſue in the Exchequer Chamber by Bill, or petition to the King, in the nature of a writ of falſe judgement, for the Reverſal of that judgement. *Tanfield* ſeemed, that it is proper ſo to do, for by 13. Rich. 2. if a falſe judgement be given in a baſe Court, the partie grieved, ought firſt to ſue to the Lord of the Mannor by petition, to reverſe this judgement, and here the King being Lord of the Mannor, it is very proper to ſue here in the Exchequer Chamber by petition, for in regard that it concerneth the Kings Mannor, the ſuit ought not to be in the Chancery, as in caſe a Common perſon were Lord, and for that very cauſe it was diſmiſſed out of the Chancery, as Serjeant Harris ſaid: and Tanfield ſaid, that he was of Councel in Petriſhals caſe in the time of the Lord Bromley, where it was debated at large, if ſuch a judgement ought to be reverſed by petition in the Chancery, in caſe where a Common perſon was Lord, and at laſt it was decreed, that it ſhould be, as in that caſe of Patſhal, and for the ſame reaſon here the King being Lord; and therefore day was given till the next Term to ſhew their errours; and Serjeant Harris ſaid, that the errors are in effect no others then were in the caſe 9. Eliz. Dyer fo. 262. and in *Godmanchesters* caſe, and it was adjourned.

Scot and his wife againſt *Hilliar.*

SCot and his wife Plaintiffs, againſt Hilliar for theſe words ſpoken of the wife, viz. ſhe would have cut her husbands throat, and did attempt to do it. Hutton Serjeant, in arreſt of judgement ſaid, that theſe words are not actionable, for the will or attempt is not puniſhable by our Lawe, and he vouched *Cockains* caſe *Cook* lib. 4. cited in Eaten and Allens caſe, but by the Court an Action lies, for the attempt is a cauſe for which the husband may be divorced, if it were true, and it is a very great ſlander, and Baron *Snig* ſaid, that in the ſame Term a judgement was given in the Kings Bench, and was affirmed in the Exchequer Chamber upon a writ of error for theſe words. He lay in the high way to rob me, and therefore let judgement be entred for the Plaintiffe, but it was adjudged in the principal caſe, that for the words ſhe would have cut her husbands throat no Action would lie.

Gooches

Hill. 8. *Jacobi* in the *Exchequer*.

Gooches Caſe.

A Coppyholder ſurrenders into the hands of the Cuſtomary Tenants, to the uſe of Anne his Wife, and after before any Court the ſaid Coppyholder ſurrenders the Land into the hands of other Cuſtomary Tenants, to the uſe of the ſaid Anne for her life, the remainder to Percie in Fee, upon condition that he in remainder, & his Heirs ſhould pay 20. s. per annum at Michaelmas for ever, the firſt payment to commence immediately after the death of the ſaid Anne, viz. at the next feaſt of St. Michael, and this to be paid in the Church Porch of D. to the Church Wardens of D. in the preſence of four diſcreet Pariſhioners, or otherwiſe that a ſtranger ſhould re-enter, and at the next Court both theſe ſurrenders were preſent, and the Steward admitted the ſaid A. according to the ſecond ſurrender, and ſhe dyed, and now upon pretence, that the rent of 20. s. was not paid by the Heirs of him in remainder, the Heir of Gooch who made the ſurrender had entred, and thereupon an Action was brought, and upon the evidence the Jury to the County of Bedford now at the Bar: Theſe matters were moved by Serjeant Nichols: That a ſurrender into the hands of Cuſtomary Tenants cannot be Countermanded, and therefore the ſecond ſurrender void, and the admittance ſhall work to ſuch uſes as the firſt ſurrender was made, as in Anne Weſtwicks Caſe, Cook Lib. 4. And to prove that a ſurrender into the hands of Cuſtomary Tenants is not countermandable, he ſaid, that it is not countermandable by death, nor ſurrender, Cooke lib. 4. in his Coppyhold Caſes. That a preſentment in the Court may be after the death of the ſurrenderer, and the admittance thereupon is good, and he compared it to the Caſe of the delivery of a Deed, as an Eſcroll which may be delivered as his Deed after the death of the Maker, as it is in Jennings and Braggs caſe Cook lib. 3. which was not denyed by the Court. Serjeant Dodderidge ſaid, that when a ſurrender is made upon condition that he ſhall pay a ſumme of money to a ſtranger, theſe words make an eſtate conditionall, and give power implyedly to the Heirs of the party who did ſurrender, to re-enter for non-payment, and the words which give power to a ſtranger to re-enter, are meerely void: nevertheleſſe the precedent words ſhall ſtand, and make the eſtate conditionall, Tanfield, Littleton ſaies that ſuch a re-entry is void, for a re-entry cannot be limited to a Stranger. Nichols Serjeant ſaid, that if a ſurrender be made, that he ſhall pay ſo much money, that this makes the eſtate conditionall, and gives a re-entry to the Heirs of him who did ſurrender. But when it goes further, and doth not leave the condition to be carried by the Law, in ſuch caſe all the words ſhould be void, becauſe it cannot be according to the intent, as in the caſe of a reſervation of rent, the Law will carry it to the Reverſion, but if it be particularly reſerved, then it will go according to the reſervation, or otherwiſe will be void, and ſo here Tanfield: Admit that here was a conditionall eſtate by vertue of the Surrender laſt made, and this condition is alſo to be performed to a ſtranger, which generally ought to be taken ſtrictly, yet, as it is heze, he who will take advantage thereof, ought to prove a voluntary neglect in the party, in the not performance of the Condition, and inaſmuch as there is no certain time appointed, when the payment of this Annuall rent ſhould be made, but generally at Michaelmas, next after the death of the ſaid Anne, thereby in this caſe the Chuch-wardens ought to notifie the death of the ſaid Anne, before the firſt day of payment, by reaſonable ſpace, or otherwiſe the condition is not broken, and alſo it is appointed heze to be paid in the preſence of four diſcreet Pariſhioners, by the party who ſhould perform the condition, yet by intendment he hath no notice, who are diſcreet, or who are

Hill. 8. *Jac.* in the *Exchequer.*

nst, eſpecially he being an Infant, as in our caſe he is, and therefore although the condition is to be performed to a ſtranger, which generally ought to be performed ſtrictly, according to 12. E. 3. Yet this is to be intended only in ſuch caſes where the party had certain notice of all circumſtances requiſite for payment thereof, and therefore he directed the Jury, that for want of knowledge of ſuch circumſtances, they ſhould give a Verdict that the condition was not broken; And Dodderidge Serjeant moved that this matter might be ſpecially found. Tanfield ſaid, the Jury knows our opinion, and therefore leave it to them, and the Verdict was given that the condition was not broken: See Term Paſch. that proofes by depoſition taken here in a former ſuite, ſhall be allowed in this, notwithſtanding all the parties be alive; and it was adjourned. Note, that in Staffords caſe in the Court of Wards this Term, Flemming and Cook were of opinion with Tanfield here, viz. That notice ought to be given to the Infant in the Caſe aboveſaid.

I. S. was Parſon of D. as appropriate, and A. is Vicar, and the King is Patron of the ſaid Vicaridge, and debate was between the Parſon and the Vicar, this Suite ought to be in the Exchequer for theſe Tithes, and by the Court it may be commenced accordingly by Engliſh Bill in the Exchequer, or by Action to the Office of Pleas, for it is apparant that the King is Supreme Ordinary, this was Paſch. 9. Jacobi.

Sir *Stephen Leazures* caſe.

IN Sir Stephen Leazures caſe upon a charge upon Sir Thomas Greſham deceaſed, Proceſs iſſued to the Sheriffs of *London* to inquire what Lands the ſaid Sir Thomas had in London at the time of the debt accrewed, and to whoſe hands, &c. And the Inquiſition found, that the ſaid Sir Thomas was ſeiſed of divers Meſſuages in London in four ſeverall Pariſhes, viz. in, &c. And now the Maior and Comminaltie of London came as Tenants of the premiſſes, and demanded Oyer of the Inquiſition, and then demurred thereupon, and by the Court the Inquiſition is inſufficient, for the words of divers, &c. are ſo generall, that no exception thereupon may be made, nor the party can give no anſwer thereunto, ſo of an Office found in the Court of Wards, as it hath been divers times here uſed, ſee Carters caſe Paſch 8. Jac. in the Court of Wards.

Kitchin againſt *Calvert.*

SEe the Caſe before, fo. — many Arguments therein at the Bar, by Bridgeman, Ireland, Serjeant Hutton, and the Atturney Generall in Michaelmas, and Hilalry, —— Jac. ——— And now the Barons argued, and firſt, Bromley Puiſne Baron argued, for the firſt matter which is when a Church being void, the Patron contracts with Parkinſon for money to be given to preſent Kitchin, the money to be given by Parkinſon, and Kitchin not knowing of this Symonie, is preſented, inſtituted, and inducted thereunto, whether this be void or not. The 2d. Matter is, admitting that this is void, & that the Queen preſented Covell who died before Inſtitution or admiſſion, if this preſentation be good to Calvert, without a Repeal of the Preſentation made by the Queen, and it ſeems to be in both points for the Plaintiff. To the firſt point he ſaid, That the intent of the Statute was to eradicate all manner of Symonies, and therefore the words are not, if any man give money to be preſented, but they are if any preſent for money,

money, and the Jurors here found 20. l. to be given, and nothing for what it was given, or to whom it was given, for if money be the meede, a Preſentation is void, and therefore if I. S. be Patron of the Church of D. which is void, and a ſtranger ſaith to me, procure the Preſentation for A. and you ſhall have 100. l. and he procured A. to be preſented: here if the Patron had notice of the money given to me, this Preſentation is void, but otherwiſe not, and in our caſe without notice of the Parſon the Admiſſion, and all which enſued thereupon is void, by reaſon of the Symonie in the Patron, and it is void as to the Parſon alſo, and if in this Caſe we are not within the words of the Statute, yet we are within the intent cleerely, as upon 1. Ed. 6. of Chanteries, an eſtate made for years, or for life to Superſtitious uſes ſhall be within the intent, although not within the words of that Statute, as it appears in Adams and Lamberts caſe Cooke lib. 4. So the Statute of 11. H. 7. ſhould be conſtrued to meet with Caſes of like miſchief, as it appears in Sir George Browns caſe, Cooke Lib. 3. and Panormitane ſaith that Simonia eſt Studioſa voluntas emendi, vel vendendi aliquid Spirituale, vel Spirituali annexum cum opere ſubſequente. To the ſecond Point, it ſeems that the Preſentation made by the King to Calvert is good without aid of the Statute of 6. H. 8. cap. 15. for Covell who were the Preſentee of the Queeen had not intereſt, no eſtate, and yet if he had, it would be void by the death of the Queen, for the preſentation is but a commendation, and therefore if the Patron preſent his Villaine, this maketh no infranchiſement, and ſo if Leſſee for years of a Patronage be preſented, this doth not extinguiſh his Term. And whereas it hath been ſaid, that the Kings Grant cannot be conſtrued to two intents, true it is if it be to the Kings prejudice, but otherwiſe it is, if it be for his benefit, as plainly appears in Engleſieldss caſe Cook lib. 7. See 17. Ed. 3. fo. 29. Alſo it is without queſtion, that the King may actually revoke his Preſentation as it appears by 28. Ed. 3. 47. And this implied Revocation is as good being for the Kings benefit, as an actuall or expreſſe Revocation: Dyer 18. Eliz. 348. And it was adjudged in Paſch. 3. Jac. in the Common Pleas, Rot 1722. one Williams caſe, that an Actuall Revocation or Repeale is not neceſſary; And ſo it was adjudged, Trin. 8. Jac. Rot. 1811. in the Biſhop of Chicheſters caſe, and therefore the King may make a Preſentation to a Church which belongs to him by reaſon of Wardſhip under the Seale of the Court of Wards, becauſe the preſentation is only a Commendation as it was there ſaid, and ſo it was agreed alſo, Trin. 8. Jac. at Serjeants Inne by Flemming, Cook, and Tanfield in the Lord Windſors caſe, referred unto them out of the Court of Wards, and there it was ſaid by Cook, that the King may preſent by Parol, as it appears by 17. Eliz. Dyer, and that a Second Adminiſtration may be well granted without Repeal of the firſt, and alſo it ſeemes, that the Statute of 6. H. 8. cap. 15. doth not extend to a Chaplain, for he is not a Servant within that Statute, nor a Preſentation is not a thing within that Statute, and moreover in this Caſe, Covel who was the Queens Preſentee is not in life, and therefore this Caſe cleerely is out of the Clauſe of the Statute of 6 H. 8 and ſo he concluded on the whole matter, that Judgement ought to be given for the Plaintiff. Altham the ſecond Baron accordingly; The Preſentation made to Kitchin is void, and the Admiſſion, and all ſubſequent thereupon is void alſo, for the words of the Statute are, that if a Preſentation be made for monie, it ſhall be void, and that the King may preſent that Turne, and therefore the want of privity in the Incumbent is nothing to the purpoſe, as to the avoiding of the Benefice, but his want of privitie availeth to excuſe him of being Simoniacus: yet becauſe he is Simoniace Promotus the preſentation is void, and the King ſhall have it by the expreſſe words of the Statute, and therefore as it ſeems if in this Statute there had been an expreſſe ſaving of the intereſt of the Incumbent, by reaſon of his innocency, yet ſuch a ſaving of Intereſt had been void, and repugnant, in reſpect that it was expreſſly given to the King before, as it is in Nichols caſe in Plowden upon the Stat. of 1. H. 7. See 1. Mar. Dyer, and 7. Eliz. Dyer 231. ſuch a ſaving doubted

Hill. 8. Jac. in the Exchequer

if

Hill. 8. *Jac.* in the *Exchequer.*

if it be void, and in Cook lib. 1. Altonwoods caſe, a ſaving Repugnant to the expreſſe words of the Premiſſes is void, and ſo in our Caſe the Preſentation is given to the King expreſſely, and therefore if there were a ſaving in the words ſubſequent, this were void, much more in our Caſe where there is no ſaving: And to prove that by the Symonie in the Patron, that the Patron ſhall be prejudiced, he vouched 42. *E.* 3. fo. 2. If goods be given to B. by A. this is by fraud in A. to the intent that he may defraud another, although B. is not knowing of this friend, yet the gift is void as to him 34. E. 1. Title Garranty accordingly, and Burrells caſe Cook lib. 6. upon the Statute of 27 Eliz cap. 4. to the ſame purpoſe. To the ſecond matter, it ſeems that by the Queens death, her Preſentation is determined clearely, and ſo in caſe of a common perſon, for if an Admiſſion, &c. ſhould follow after the death of the Preſentor, this is without any Authority of the inſtrument of Preſentation, for although there were no Admiſſion, there is no Preſentation, and he ſaid that the Preſentation palleth no intereſt, but is as a Commendation, and therefore he compared it to the Caſe of Say and Fuller in Plowden Com. If a Leaſe be made for ſo many years as a ſtranger ſhall name, there ought to be certainty of years appointed in the life of the parties, or otherwiſe it will be void, and in 38. E. 3. 3. If a Biſhop preſent and die before, &c. Now the King ſhall preſent anew, and alſo there it appears that the King may preſent by Paroll well enough, and ſo it is ſaid in 34. E. 3. 8. tit. Quare impedit 11. That a Preſentment made by the Biſhop becometh null, and void by his death, and therefore it appeareth in Fitzh. Office of Court 29. that licence to alien granted to the King is void by the Kings death, & there needeth no actual Repeal or recital of the new preſentation, & yet I agree that the King may make an actual repeal if he will, as it appears by divers caſes which have been cited before, but that is of neceſſity to be done, and as it ſeems the words of the Statute 6. H. 8. prove that before this Statute a ſecond Grant made, the firſt void without actual repeal, in caſe where the thing paſſed by the Grant, and by 38. E. 3. fo. 3. 4. it appears that a ſecond Preſentation made by the King, was good without a repeal of the firſt, and by Gaſcoigne 7. H. 4. 32. if the King make a Preſentation to one, and then preſents another, without recitall or repeal of the firſt, yet the Biſhop ought to receive the latter Preſentee, for it is good without actual repeal, wherefore judgement ought to be given for the Plaintiff. Snig Baron ſaid, that as the Action is brought, judgement ought to be given for the Plaintiff, but if the Plaintiff had brought a Quare impedit, peradventure I ſhould have been of another opinion; And as to the point of Symonie by the Civill Law, it was puniſhable by deprivation, and the guilt of the Patron ſhould prejudice the Parſon, as to matter of Commodity in the Parſonage, and at the Common Law, if the Parſon will pleade ſuch Preſentment, he ſhould be prejudiced, as appears by our Books, and hereby the incumbency the words of the Statute will not be ſatisfied, for then the Queen ſhould not Preſent, if an uſurper preſent, and the Preſentee is in by ſix moneths, this gives Title of Preſentation to the King againſt the rightfull Patron, alſo it ſeemeth, That if I. S. hath an Advowſon, and A. purchaſe the next avoidance to the intent to preſent B. and the Church becomes void, and A. preſents B. this is Symonie by averment, as by good pleading the Preſentation of B. ſhall be adjudged void. To the ſecond Point, in reſpect that the Plaintiff had the poſſeſſion by induction, it is no queſtion but he may retaine a poſſeſſorie Action for the Titles, But if it were in a Quare impedit, it would be materiall whether a Repeal ſhould be in the caſe or not, according to the Preſidents in the Booke of Entries, fo. 303, 304, 305. for if a Licence be Granted to purchaſe in Mortmaine, this may well be executed after the death of the Queene, as it appeareth by Fitzherberts natura brevium expreſſly, and ſo in Dyer, a licenſe of Tranſportation doth not ceaſe by the Kings death 7. H. 4. in the Counteſs of Kents caſe, it appears, when the King makes a grant which is void, yet there ſhall be no new grant without an actuall

actual repeal, but it ſeems we are out of the intent of the Statute of 6. H. 8. becauſe the words during his pleaſure are not in the grant or Patent, and ſo upon the whole matter judgement ſhall be given for the Plantiffe. Tanfield accordingly, the caſe is, that the Defendant had prioritie of the poſſeſſion of the Corn for which the action is brought, and yet it ſeems judgement ought to be given for the Plantiffe: and firſt, as this caſe is, here is Simonie by the Civil Law, and the partie had his benefice by Simonie, although he be not conuſant thereof. Secoundly, admit that here was not Simonie by the intenoment of the Civil Law, yet the Statute hath made an avoidance of the benifice in this caſe, although it be not Simonie, for the Statute ſpeaks not one word of Simonie throughout the Act, and yet by expreſs words it doth avoid ſuch preſentations as this is, and as to the Civil Law, ſuch benefice is to be made void by ſentence declaratorie, but it is not void ipſo facto, as it ſeems in the caſe where a common perſon was conſenting to the Simonie, but the text of the Civil Law ſayes expreſly, that the Church ought not to be filled Corruptivè, or by corruption, and the Civil Law expreſſeth ſuch a perſon as is in our caſe, by Simoniace promotus, and calls him who is particeps criminis Simoniacus, and he who is Simoniacus, is by the Civil Law deprived not only of the benefice ipſo facto, but alſo is deprived to be a Miniſter, and adjudged guiltie in Culpa et pœna. Petrus Benefieldus a late writer & of good authoritie ſaith, that if a friend give money to a patron, to make a promiſe to him &c. and the incumbent payes it, ſuch an incumbent is Simoniacus by the Civil Law, and ſo if the incumbent pay the mony not knowing it untill after the induction, yet he is Simoniacus, and by him if a friend gives money, and the Parſon is thereupon preſented, though the Parſon if he knew not of the money given, yet he ſhall be deprived of the benefice, and this difference was certified by Anderſon, and Gawdey, to the Councel table upon a reference made to them by the King, touching the filling of benefices by corrupt means, and the Statute of purpoſe forbears to uſe the word Simonie, for avoiding of nice conſtruction of that word in the Civil Law, and therefore the makers of the Act ſets down plainly the words of the Statute, that if any ſhall be promoted for money &c. ſo that by theſe words it is not material from whom the money comes, and then in ſuch caſes for the avoiding of all ſuch grand offences, a liberal conſtruction ought to be made, as hath been uſed in ſuch caſes, and therefore be remembred the large conſtruction which was made upon the Statute of fines, in the Lord Zouches caſe lib. Cook 3. and ſo upon the Statute of uſurie, it hath been adjudged, that if money be lent to be re-paid with uſe above 10 l. in the hundred at ſuch a day, if three men or one man ſo long live, in theſe caſes all ſuch bargains and contracts are void within the intent of the Statute, as it hath been adjudged in the Common Pleas, and ſo it is in Gooches caſe Cook lib. 5. upon the Statute of fraudulent conveyances, and ſecret Joyntures; alſo upon the Statute of Simonie it was adjudged, although ſome of the Common Pleas doubted of it, in regard a father is bound to provide for his ſon; and Rogers and Bakers caſe in this Court was an antient caſe, and adjudged for the Plantiffe: and as to the other point, it is found by the verdict, that the preſentation made by the Queen to Covel is not revoked, nor admitted, which words implie that Covel is ſtill living in caſe of a ſpecial verdict, and therefore to argue to that point, as if it were found that Covel was living, yet he conceived, that the preſentation without inſtitution and Induction is determined by the Queens death, and therefore in 2. Ed. 3. a licenſe of Alienation clearly is not good in the time of another King, for the licenſe ſaith which are holden of us &c. and by the death of the King they are not holden of him. Fitzherberts natura brevium contra 16 H. 8. the nature of a preſentment is explained, where an Infant would avoid his preſentation, and in the principal caſe the Biſhop cannot make any admiſſion upon this preſentation of Covel after the Queens death, for he cannot do that in any manner according to the preſentation, becauſe that is determined by the Queens death, and therefore

Hill. 8. *Jac.* in the *Exchequer.*

Hill. 8. *Jac.* in the *Exchequer.*

fore it ſeems clearly there needs no repeal in ſuch a caſe, although it appears by ſome preſidents, that repeals have been uſed in ſuch caſes, and as to the caſe 17. Eliz. Dyer 339. that proveth not that there ought to be any repeal, for it appears there, that judgement was given upon a reaſon altogether different from our caſe, and that was, becauſe a preſentation was obtained of the Queen, a quare impedit depending by her, of which ſuit ſhe had no notice, and for that cauſe her ſecond preſentation was void, and that was the true reaſon of that judgement, as it is alſo put in Greens caſe Cook lib. 6. and I was preſent Mich. 17. Eliz. when this caſe was adjudged, and the ſole reaſon which they gave for the judgement was, becauſe the preſentation by intendment could not take away the Action attached by the Queen, for then the Queens grant ſhould enure to a double intent, which the Law will never tollerate without expreſs words purporting ſo much, but in our caſe there is no ſuch double intendment, and therefore &c. but if there had been an admiſſion, and inſtitution purſuing the preſentation of Covel, although no induction, yet peradventure in ſuch caſe, there ought to have been an appeal, becauſe in ſuch caſe it is not only the Queens Act, but of the ordinary alſo, interpoſing, which is a Judicial Act, alſo without queſtion, we are out of the Statute of 6. H. 8. for here is no grant made by the Queen, and a preſentation clearly is not within that Statute, and for that other reaſon the preſentation of Calvert is good, without recital of the Queens preſentation: alſo clearly if there ought to be a repeal in the caſe, yet it is not examinable in this Action of Treſpaſs which is poſſeſſorie, and for the profits only, but it may be examinable in a quare impedit, and as to Greens caſe Cook lib. 6. which hath been uſed as an authoritie in this caſe, that differs much from our caſe, for there the thing which made the Queens preſentation void, was contained within the very Charter of the preſentation, and therefore differed from our caſe, wherefore he commanded judgement ſhould be entred for the Plantiffe, and ſo it was.

Halſeys caſe touching Recuſancy.

The caſe in the Exchequer Chamber touching the payment of the Kings Majeſties debt due for the Recuſancy of John Halſey, as Recuſant convict deceaſed, with the lands and goods bought in the name of John Grove, and Richard Cox Defendant in this Court, that John Halſey was indicted and convicted for Recuſancy the 18. day of July Anno 23. Eliz. and ſo remained convicted without ſubmiſſion till his death, who died the laſt day of March 3. Iac. and after his conviction, viz. after the 40. year of the Raign of the late Queen Elizabeth did purchaſe with his own money divers leaſes for years, yet to come of lands in the Countie of Worceſter, and Warwick, in the name of Richard Cocks for himſelf in truſt, and likewiſe did with his own money purchaſe certain leaſes for years, yet to come of lands in the County of Hereford, in the name of the ſaid John Grove, all which purchaſes were in truſt for the Recuſant, and to his uſe; Margaret Field is his next heir, who is no Recuſant, Iohn Halſey hath not paid 20. l. a moneth ſince his conviction, nor any part thereof, theſe lands and leaſes were ſeiſed into the Kings hands, for the ſatisfaction of the forfeitures due for the Recuſancy of the ſaid Halſey 14. Auguſt 5. Iac. Thomas Coventrie argued for the Defendant; the queſtion is, whether theſe lands which were never in the Recuſant, but bought in the name of the Defendants in manner aforeſaid, be liable to the payment of his Majeſties debts by the ſaid Recuſant as above ſaid, or not: there are three points conſiderable in the caſe. Firſt, if lands purchaſed by the Recuſant, in the name of others in truſt are liable to his debt. Secondly, if the land of a Recuſant may be ſeiſed after his death. Thirdly, if they ſhall be charged by the Statute of 1. Iac. as to the firſt, it ſeems they are not, wherein I ſhall endeavour to prove three things. Firſt, that ſuch land was not liable to debt by

the

the Common Law. Secondly, that they are not liable to debts by the general words of the Statute Law. Thirdly, that they are not liable to debt by any word within the Statute of primo Iac. as to the firſt he obſerved, that here is no fraud put in the caſe, but that theſe lands and leaſes were never in the Recuſant, ſo that before that they were conveyed to the Defendants, they were not liable to this debt; and I alwayes obſerved, that which the common law calleth fraud, ought to be of ſuch nature as ſhall be tortious, and prejudicial to a third perſon, and put him in a worſe eſtate and condition then he was before, and then he who is ſo prejudiced in ſome caſes ſhould avoid ſuch conveyances by the common Law: 22. Aſſiſes 72. 43. Ed. 3. 2. and 32. ——— the Defendant in debt after judgement alienes his goods, and he himſelf takes the profits, yet the Plantiffe ſhall have them in execution; ſo that if a man binde himſelf, and his heirs in an Obligation, and dies, and aſſets deſcend to his heir, who by Covin aliens thoſe aſſets, yet he ſhall be charged in debt; for in theſe caſes the Plantiffe had a lawful debt, and ſuch lands and goods before the alienation were liable, and that former intereſt was intended to be defeated by thoſe alienations, and therefore they are void: but of the other ſide, where no former intereſt of the partie is wronged, there no fraudulent conveyance was void at the Common Law; and therefore if Tenant in Knights ſervice had made a fraudulent Feoſment to defraud the Lord of his wardſhip, this was not aided by the Common Law until the Statute of Marlebridge, for the title of the Lord was not prejudiced or wronged by this Feoſment, becauſe it was ſubſequent to the Feoſment, alſo after the ſaid Statute the Lord was without remedy for his releaſe, for it is agreed in 17. Ed. 3. fo. 54. and 31. Ed. 3. Collation 29. and therefore at the Common Law, if ceſtuy que uſe, had bound himſelf and his heirs in an Obligation, and died, if the uſe deſcended to his heir, none will ſay, this uſe was aſſets to the heir, and ſo was Rigler and Hunters caſe 25. *Eliz.* as to the ſecond point it ſeems, that the general words of a Statute ſhall be expounded according to the rule and reaſon of the Common Law, and by the Common Law ſuch confidence is not extendible, therefore &c. Weſtmin. 2. cap. 18. which gives the elegit, hath theſe words medietatem terræ, and within thoſe words an uſe was never extendible by that Statute 30. Ed. 3. becauſe it was not an eſtate in him, and ſo if a man be indebted for Merchandiſe or money borrowed, and makes a gift of his lands and Chattels to defraud Creditors, and takes the profits himſelf, and flieth to the Sanctuary at Weſtminſter, or Saint Martins, and there abideth by conclusion to avoid the payment of his debts, it is thereby enacted, that Proclamation ſhall be made at the Gate of the Sanctuary, where ſuch perſon reſideth by the Sheriffe, and if ſuch perſon doth not thereupon appear in perſon, or by Attorney, judgement ſhall be given againſt him, and execution awarded, aswel of thoſe lands and goods given by fraud, as of any other out of the ſame Franchiſe, theſe words are more particular then the Statute of Weſtminſter the ſecond, and yet it was doubted, if it did extend to executions for debt, as it appears by 7. H. 7. and 11. H. 7. 27. and therefore in 19. H. 7. cap. 15. an Act of Parliament was made, that execution for debts, Recognizances, and Statutes, ſhould be ſued of lands in uſe. As to the third it ſeems that, that Statute doth not make lands in uſe liable to debts, the words of the Statute are, that the King ſhall ſeiſe two parts of the lands, Tenements, and Hereditaments, leaſes of Farms of ſuch offendors, ſo that they are as general as the words of the Statute of Weſtminſter 2. cap. 18. and here thoſe lands and leaſes were not the Recuſants, for he had but a confidence in them: the firſt clauſe of the Statute doth not extend thereunto for two cauſes. Firſt, in regard that it never was in the Recuſant, and this clauſe extends, only to ſuch conveyances which are made by any man, which hath not repaired or ſhall not repaire to ſome Church; for the diſjunctive words do not extend throughout that branch, but to the laſt part thereof, viz. that which cometh after the word (and) for otherwiſe this would extend to conveyances made at any time without limitation, which ſhould be againſt the

Hill. 8. *Jac.* in the *Exchequer*

2 Rich. 2. Stat. 2. cap. 3. 1. Rich. 3. cap. 1.

Hill. 8. *Jac.* in the *Exchequer.*

meaning of the Act. Secondly, this Branch provides what ſhall be done concerning the King touching the levying, and paying of ſuch ſummes of money, as any perſon by the Lawes of the Realm ought to pay, or elſe to forfeit &c. and by the Statutes before made nothing was forfeited, but for ſuch time as is mentioned in the Indictment, which in our caſe is but 6. moneths, but out of this branch a ſtrong argument may be made, in reſpect that the Statute avoids all conveyances made by Recuſants, in truſt by expreſs words, but ſaith nothing to conveyances made by others to the uſe of Recuſants, and therefore this Statute doth not extend unto it; if Tenant by Knights ſervice inſeoffs his heir within age, and dies, the Lord may enter upon the heir without ſuing an action, but if a Feoffment be made to a ſtranger, there he cannot enter, but ought to bring his Action according to the proviſion of that Statute, becauſe it may be to the uſe of the Feoffee, but no ſuch proviſion is made for the heir, the Statute of 3. Jac. cap. 4. provides by expreſs words, that the King ſhall ſeiſe two parts of all the lands, Tenements, and Hereditaments, Leaſes, and Farms, that at the time of ſuch ſeiſure ſhall be, or afterwards ſhall come to any of the hands of the ſaid offendors, or any other to their uſe, or in truſt for him, or her, or at his, or her diſpoſe, or diſpoſition, or whereby, wherewith, or in conſideration whereof ſuch offendors, or their families, or any of them ſhall or may be relieved, maintained, or kept &c. the different penning of theſe Statutes proves the diverſitie of the meaning thereof, this Statute is a new Law which gives to the King this penalty which he had not before, and in new manner, for it appoints, that the partie ſhall be convicted by Proclamation, and that being ſo convicted, he ſhall alwayes pay the ſaid penaltie, until his ſubmiſſion without any other conviction 3. Jac. cap. 4. and alſo limits a manner how this new penaltie ſhall be levied, viz. by ſeiſure of two parts of the land &c. then when a Statute gives a new thing, which was not at the Common Law, and limits a courſe and means whereby it ſhall be levied, that courſe ought to be purſued, and it cannot be done in any other manner, the Statute of 8 H. 6. cap. 12. makes the imbeſling of a Record Felony, and that this ſhall be inquired by Jury, whereof one halfe ſhall be Clarks of ſome of the ſame Courts, and that the Judges of the one Bench, or of the other ſhall hear and determine it, and the caſe was, that part of the offence was done in Middleſex, and part in London, ſo that the offence could not have ſuch proceeding as the Statute appointed, and therefore it was holden, that it ſhould not be puniſhed at all. Mich. 41. et 42. *Eliz.* Betwixt Aggard and Standiſh: the Statute of 8. Ed. 4. cap. 2. inflicts a penaltie upon him, that makes a retainer by parol, and moreover it is thereby ordained, that before the King in his Bench, before the Juſtices of the Common Pleas, Juſtices of the Peace, Oyer and Terminer, every man that will, may complain againſt ſuch perſon or perſons, doing againſt the form of this ordinance, ſhall be admitted to give information for the King, and it was holden, that the informer could not ſue for himſelf, and the Queen upon this Statute, for an offence done in any Court not mentioned in that Statute: the Statute of 35, Eliz. cap. 1. appoints, that for the better and ſpedier levying and Recovering, for and by the Queens Majeſtie, of all and ſingular, the pains, duties, forfeitures, and payments, which at any time hereafter ſhall grow due, or be payable by vertue of this Act, and of the Act made in the 23d. year of her Majeſties Raign concerning Recuſants, that all and every the ſaid pains, duties, &c. may be recovered to her uſe, by Action of debt, Bill, plaint, or information, or otherwiſe in any of her Courts of her Bench, Common Pleas, or Exchequer, in ſuch ſort in all reſpects, as by the ordinary courſe of the Common Lawes of this Realm, any other debt due by any ſuch perſon, in any other caſe ſhould or may be recovered, wherein no eſſoin: &c. Note that this Statute extends not to any penaltie upon the Statute of 28. Eliz. cap. 6. alſo the Common Law doth not give any means to levie a debt upon a truſt: and as to the general point, it ſeems that no land can be ſeiſed after the death of the Recuſant, 23.

Eliz,

Eliz. cap. 1. enacteth that every perſon of the age of 16. years, which ſhall not repaire to ſome Church, &c. but forbear the ſame contrary to the Tenor of the Statute made in the firſt year of her raign for uniformity of common prayer, and being thereof lawfully convicted, ſhall forfeit to the Queen for every moneth which he or ſhe ſhall ſo forbear 20.l. And that Statute doth give no forfeiture at all for Lands: And alſo it giveth no penaltie without conviction, ſo that the death of the party before conviction diſchargeth all, and ſo without queſtion it was at that day. This laſt Point ſeems to be remedied in part by the Statute of 28. Eliz. cap. 6. for thereby if the party be once convicted, he ſhall alwaies pay after without other conviction, and this Statute gives alſo a Seiſure, but before any ſeiſure. Three things ought to concur, 1. Recuſancy. 2. Conviction. 3. Default of payment. And the laſt of theſe was the true cauſe of the ſeiſure, viz. That is, the contempt of not payment. Therefore it was adjudged in Sir William Greenes caſe: that this ſeiſure ſhall not go in ſatisfaction of ſuch debt, but the King ſhall hold it as a penalty for the contempt untill the debt be paid, ſo that when a Statute impoſeth a penaltie for a contempt, as the contempt is perſonall, ſo is the penalty; And therefore the death of the party before that it be executed or turned in rem judicatam, diſchargeth all: and I ſhall prove it by the different plea in an Action upon a penall Statute, and other common Actions, and therefore in debt, not guilty is no plea, but in debt upon a penall Law it is a good Plea, for in truth untill it be adjudged, it is no debt, but a contempt, Michaelmas 41, 42. Eliz. betwixt Car and Jones, and in debt upon the Statute of 2. Ed. 6. not guilty was adjudged a good plea, Trin. 42. Eli between Merley & Edwards. 2. It may be proved by ẏ different forms of judgment, for in common actions ẏ judgment is Quod quærens recuperet, &c. But in informations the uſuall form is, Quod defendens forisfaciet, 41. Aſſ. which implies that it is not perfect untill the Judgement, and before it is only a contempt, and if ſo, then by the death of the party it is diſcharged. Thirdly, I ſhall prove it by Authority, that the death of the parties before Judgement diſchargeth aſwell the contempt, as the penaltie of a penall Law, 40. Ed. 3. Executor 74. debt lies not againſt the Executors of a Jaylor, who ſuffers Priſoners to eſcape, 15. Eliz. Dyer 322. in the like Caſe the opinion of the Court was, that an Action did not lye againſt the Executors of the Warden of the Fleet, but there ought to have been a Judgement againſt him in his life time, for the Offence is but a Treſpaſs by negligence which dies with the Perſon, 18. Eliz. Dyer. An Action brought againſt the Heire, and ruled that it doth not lie, for it is a Maxime that no Law or Statute chargeth the Heir for the wrong or treſpaſſe of his Father: Alſo it is to be obſerved in the Principall Caſe, that the Statute limits the ſeiſure to be by Proces out of the Exchequer, ſo no ſeiſure can be without Proces, as it may be upon ſome other Statute; But a judiciall courſe is hereby preſcribed whereupon the Partie may plead with the King for his Land, and therefore if that courſe be not purſued in the life of the party, it is too late to purſue it after his death: Alſo the words are, that he ſhall ſeiſe all the goods, and two parts of the Lands of ſuch Offendors. But after his death the goods are not his, but his Executors; and the Lands are not his, but his Heirs, and a ſeiſure by way of penalty relateth no higher then to the time of the ſeiſure: alſo the words of the ſubſequent Proviſo explaine it further, for if it be demanded when the King ſhall ſeiſe two parts, it is anſwered at the ſame time when he leaveth the third part, and when muſt he leave the third part, it is anſwered, in the life of the Recuſant, That it may be for the maintenance of his Wife, Children, and Family, and after his death he hath neither Wife, Children, nor Family, for in a Writ of Dower, the Demandant ſhall ſay that ſhe was Wife, and not that ſhe is Wife: As to the laſt matter it ſeems that the Statute of 1. Jac. cap. 4. hath diſcharged this Land, admitting that it was not diſcharged before, wherein the words are, and if any Recuſant ſhall hereafter die, his Heir being no Recuſant: That in every ſuch Caſe, every ſuch Heire

Hill. 8. *Jac.* in the *Exchequer.*

Hill. 8. *Jac.* in the *Exchequer.*

ſhall be freed and diſcharged of all and ſingular the penalties, charges, and incumbrances happening upon him, or her in reſpect, or by reaſon of his or her Anceſtors recuſancy; and as to Walter de Chirtons Caſe, who being an Accomptant to the King, purchaſed Lands of A. with the Kings money by Covin, and took the profits, nevertheleſſe upon Inquiſition it was adjudged, that they ſhould be ſeiſed into the Kings hands for his debt: I agree that to be good Law, becauſe A. when he received the ſaid money of Walter de Chirton, that being the Kings monie, A. immediately thereby became a Debtor, and an Accomptant to the King, and then into whoſe hands ſoever theſe Lands do after come, they are ſtill chargable for that money, and therefore, &c.

Sawyer againſt *Eaſt.*

AN Ejectione firme was brought by Sawyer againſt Eaſt, for certain Mills in Eaſt-Smithfield in the County of Middleſex, the Caſe upon a ſpeciall Verdict, was this. Queen Eliz. 28. of her raign demiſed two Mills, one Meſſuage, and one Curtilage to Potter for 40. years, Potter makes Mary his Wife Executrix, and dies, Mary marries one Burhill, who in 33. Eliz. did demiſe one Meſſuage, and one Curtilage to Wilkenſon for 20. years, and dies, and Mary intermarries one Hitchmore who by deed inrolled in Chancery 20. Marcii 44. Eliz. reciting the originall Leaſe, and that he had the whole Right, State, and Intereſt and term of years which Potter had, and that he ſurrendred the eſtate, and term of years aforeſaid to the Queen, reciting the matter mentioned in the ſurrender, and that the Intereſt and Term which Potter had is come to Hitchmore, and that Hitchmore had ſurrendred the whole right, aſwell for 30. l. as for that that Hitchmore did aſſume at his proper charges to repaire, and new build the ſaid Mills being in great decay, and to give ſecurity for the ſame, did demiſe the Mills, Meſſuage, and Curtilage for 40 years to the ſaid Hitchmore rendring rent, with a Covenant to be void for not payment, &c. and after the King demiſed the premiſſes to Ferrers, and Philips two contractors, who enter and demiſe to Sawyer, who was poſſeſſed, untill ejected by Eaſt, who claimed under the leaſe to Hitchmore, and the Jury found that in the Letters, Patents to Hitchmore, were contained ordinary Covenants to repaire the Mills, and to leave them in good repair, and the Jury alſo found that Hitchmore had not given any ſecurity for the building, and repairing of the Mills, and that the Mills were not new built, nor repaired, and that Hitchmore had pulled down one of the Mills, and that the Term of twenty years is yet in being, and if upon the whole matter, &c. Bromley the Puiſne Baron ſaies, that it ſeemed to him that judgement ought to be given for the Plaintiff; Firſt, the ſuggeſtion or ſurmiſe in the Patent being falſe, in matter of value, and in ſuch a thing, which is proper for the information of the Leſſee, cauſeth the Leaſe to be void, as in 18. *Eliz.* Dyer 352. An Abbot makes a Leaſe for 60. years, the Leſſee demiſeth to I. S. for 80. years, the reverſion comes to the Queen, the 60. years expire, the ſecond Leſſee ſurrenders to the Queen, his Term and Intereſt which was nothing in ſubſtance, to the intention that the Queen ſhould re-grant to him for 20. years, this falſitie avoids the Leaſe, and yet it is no ſuch Leaſe which of neceſſity ought to be recited, and ſo is 8. H. 7. fo. 3. by Vaviſor, if the King at the ſuit of I. S. grants the Mannor of D. of the value of 50. marks, and this is of the value of 100. marks, and this upon the information of the party, in this caſe the grant is void, and ſo is 8. H. 6. 28. by Juine, if the King be informed by petition, that ſuch Land is but of the value of 8. l. a year, which in truth is of greater value, the patent is void, 11. Ed. 4. 1. The Patentee ſuggeſts that a ſurrender was made, whereas in deed there was no Surrender at all, there alſo the Patent is void, and ſo is 3. H. 7. the Prior of Norwich his caſe, but there

there it is expreſſed in the Patent, that the party had informed the Queen of a thing which is falſe, and this is not expreſſed in our caſe, yet it ſeems to me that there is no diverſitie between that caſe, and the caſe in queſtion, for it is plaine that in our caſe, that the ſurrender and conſideration, are the information of the party which was the motive to induce the Queen to her grant, for the ſuggeſtion is grounded upon the ſurrender, the which ſurrender is fraudulent and deceptive, and therefore the Patent is void. Altonwoods caſe *Cooke* Lib. 1. 40. The King grants the Mannor of Riton and Condor, where in truth they were two Mannors, there neither of them paſſe, Fitzh. Grants 58. and ſo here the ſuggeſtion is grounded upon the words of the Surrender, which are falſe and deceptive, and therefore the Patent is void, alſo it ſeems that when the Queen grants in conſideration, that the Grantee did aſſume to repair, and it is found that he had not repaired, this not performing of the conſideration avoids the Patent, and this is proved by Barwicks caſe Cook lib. 5. if the King will make a Patent for a conſideration which is for the Kings benefit, (be it Executory, or executed, of Record or not) if it be not true, or duly performed, the Patent is thereby void; And here the Covenant or aſſumption not being performed according to the Queens intention, and the conſideration of the Grant will alſo make void the Patent. And it may be conſtrued as a Proviſo in an Indenture, within ſome Caſes, doth amount to a Covenant, and condition alſo, as it was in the caſe of *Simpſon* and Titterell, and alſo in the caſe of the Earl of Pembrook vouched in Cook lib. 2. in the Lord Cromwels caſe, and therefore I conceive that the words ſuper ſe Aſſumpſit ædificare is parcell of the conſideration, aſwell as if it had been pro eo quod ædificabit; and ſo avoids the Patent by the not performance thereof: Altham Second Baron, ſaies, it ſeems to me that the Judgement ought to be given for the Plan. there are three things conſiderable in the Caſe: Firſt, whether the Leaſe made to Hitchmore were ever good or not, in reſpect of a falſe ſuggeſtion; Secondly, whether in that the conſideration, that he did aſſume upon himſelf to repair, and the Queen indeed never had any precedent information made of the want thereof, do avoid the Patent in the foundation; Thirdly, admit it be good in the foundation, whether the Leaſe become void afterwards for not repairing; And firſt I will ſpeak to ſuch things which in my opinion will not avoid the Patent; Firſt it ſeems, that this want of not aſſuring, doth not vitiate the Patent, for the word Aſſumpſit ſuppoſeth matter of Fact executed, and whether it be true or falſe, it cannot be now examined, no more then in the Caſes put 21. Ed. 4. and 26 H. 8. In conſideration of ſervice done, although there was no ſervice done, yet that ſhall not avoid the Patent; Sir Hugh *Cholmlies* caſe, Cook lib. 2. Recitall of a matter in Pais, and not of Record, which is not materiall, nor valuable, doth not vitiate the Patent, 37. H. 6. 27. The King in his Privie Seale ſuggeſts a matter in Fact, this doth not deſtroy the Patent, alſo although that the conſideration is aſwell for that he aſſumed to repair, as, &c. and it is found that he hath not repaired, yet this fault ſhall not avoid the Patent, for as it ſeems here it is not in nature of a conditionall eſtate, or Grant, as if it had been in conſideration he ſhall repaire, for as the words are here placed, it is intended that the Queen will relie upon the Aſſumpſit, and not upon the condition, and grant, and it ſeems that the Patent is void, only upon the miſrecitall, and the falſe ſuggeſtion, which is the firſt Point, for it appears by the miſrecitall, that the Queen was deceived in a thing materiall, and valuable, and therefore the Patent void, and yet I agree, that every falſe ricitall or ſuggeſtion doth not avoid a Patent, as in 9. Ed. 4. Baggots Aſſ. 29. Ed. 3. 7. if the King recite in his Patent, that he had made a precedent Grant upon a Petition, yet this falſity doth not avoid the Patent, and in 27. Ed. 4. although that this falſity, be in point of conſideration, yet if it be not for matter of profit, and valuable to the King, it doth not avoid the Patent, but if it appear, that the Kings intention was grounded upon a matter of value, and ſubſtance, and that he was therein deceived, the Patent is for that cauſe void, as in 9. H. 6. fo. 2. 8. H. 7. fo. 3. 21. Ed. 4. 9. H. 7. fo. 2. and 11. H. 4. fo. 1. and this

Hill. 8. *Jac.* in the *Exchequer*

Hill. 8. *Jac.* in the *Exche-quer.*

this is all one as if it ſhould appear in the Recitall or conſideration, that the Kings intention was grounded upon a matter of value, and the King therein deceived: therefore in Altonwoods caſe Cooke lib. 1. If the King recite that A. is indebted unto him, as Executor of B and he releaſe to him all demands generally, yet nothing ſhall be releaſed, but that which he owed as Executor, and ſo if the King recite, that whereas an Advowſon is holden of I. S. and he gives Licence to appropriate, if the Advowſon be holden of the King, this is void, 19. E. 3. Fitzh. Grants 58. It ſeems clearly that if it appear by the Patent expreſly, that the intent of the King was received, and abuſed, the Patent ſhall be void, although it be not in matter of recitall, or in matter of conſideration neither, as in 9. Ed. 4. fo. 6. and 8. by Neale 21. Aſſ. pla. 15. 40. Aſſ. pla. 36. The King gives Licence to his Tenant to alien in Fee, and afterwards it appears that this Tenant was but Tenant in Tail, and ſo in the caſe of the Market or Fair of Torrington cited in Altonwoods caſe, and in our Caſe the Queen is deceived, and miſinformed in two Circumſtances materiall, and of value. Firſt, for that ſhe conceived that a greater quantity of the thing demiſed to Potter is ſurrendred then in truth there was, and therein ſhe is deceived, for part of the thing is not come to her hands by the ſurrender. Secondly the Queens intent was to make an intire Leaſe of all in poſſeſſion, and this cannot be, for part of the thing it enures but as a Leaſe in reverſion, or future intereſt, and therefore void, as it is in Altonwoods caſe Cook Lib. 1. and the Queen hath a double prejudice hereby. Firſt, becauſe ſhe cannot diſtrain for her rent reſerved, in that part which is not ſurrendred. Secondly, ſhe cannot enter therein for the condition broken, wherefore, &c. Tanfield accordingly, that judgement ſhould be given for the Plaintiff: The Patent recites, That all the Term which Potter had ſurrendred, &c. where in truth it was not ſo, and therefore it is cleere that the Queen is deceived therein, and the Grant void, for it was the very inducement which procured the new Patent, and this recital is grounded upon the words of the deed of ſurrender, ſo ỳ the ſurren. is grounded upon ỳ information of Hitchmore contained the ſurrender. And if in that Clauſe Hitchmore had been well adviſed, the Leaſe to him ought to have been, A. having of the Mills in poſſeſſion, and A. having the Meſſuage and Garden after the Term (which Wilkinſon had) ſhould be expired, and the reſervation of the Rent ought to have been expreſſed accordingly, for as it is ſhuffled together, the condition cannot avoid the ſurrender, nor the rent cannot iſſue out thereof: Therefore it was adjudged in 9. Eliz. in the Common-Bench in the Biſhop of Salisburies caſe. B. ſeiſed of two Acres, one whereof was in Leaſe to A. for years, B. makes a Leaſe of both to a Stranger, to have ỳ one in poſſeſſion, the other in reverſion rendring 20. s. rent entirely: now this rent ſhall iſſue out of that in poſſeſſion, during the Term in A. and after it ſhall iſſue out of the whole as one intire rent, and ſo it is in our Caſe, for default of ſeverall reſervations, for this is one intire rent, and then the Queen cannot diſtrain upon all the Land, as ſhe intended, ſo in our Caſe, wherefore I adjudge the Patent void, not upon the point of recitall that is not for the not recitall of a Subjects Leaſe, viz. the Leaſe of one Wilkinſon, but it is for the cauſe of miſinforming the Queen in the matter of value, and by conſequence as hath been ſaid, Nemo tenetur informare qui neſcit, ſed quisquis ſcire quod informat; And where Snig hath ſaid, that this Patent is made Ex certa ſcientiâ & mero motu. And for this, it cannot be intended that the Queen was gull'd upon the information of the party, I ſay that there are not any words in the Grant to prove that it was Ex mero motu, &c. And for that it ſeems Snig had no true Copy of the Caſe, yet if theſe words were in the Patent, it is not void for a triviall and petty miſtaking, yet in matter ſubſtantiall it will not help it, as if the King be miſinformed of his eſtate, in ſuch a thing to be granted, or of eſtates which are in Leaſe, for theſe are materiall things, 21. Ed. 4. by Huſſey and Briant, if the King recite that whereas I have given my Land of 100. l. value to him, or whereas I have given to him the Mannor of D. and he grants to me the Mannor of S. &

this

this recitall be falſe, the Patent is void, although it hath theſe words Ex certa ſcientia, et mero motu, and ſo is 18. Eliz. Dyer 352. where the Patent was ex certa ſcientia, et mero motu, &c. but there Dyer held, that this falſitie in the matter of Recital did avoid the Patent, notwithſtanding the words ex mero motu &c. but he held it otherwiſe, if it were in a conſideration which is falſe, for at that time, the point of falſitie in matter of conſideration for 100 l. to be paid, although it be much contraverted in our Books, and it ſeems in what place ſoever of the patent it appears, that the King is miſ-informed & deceived in any matter material or concerning his own eſtate in the thing to be granted, that that will viciate the Patent, and therefore 17. Eliz. the Queen ſeiſed of the Mannor of D. grants all her purpartie of the Mannor of D. if in this caſe, a Common perſon had granted by ſuch words, the Mannor had paſſed, but in the Queens caſe it will be a void grant, becauſe a thing which ſhe intended to paſs, cannot paſs in ſuch plight as ſhe conceived it, viz. as a purpartie, and 36. Eliz. the Queen granted all her portion of Tithes &c. although ſhe had a Parſonage there, yet it doth not paſs, for this manner of Appellation implies, that the Queen was miſ-informed, and not well inſtructed of the thing to be granted, and therefore void; ſee Cook lib. 4. in Bozuns caſe, Ex certa ſcientia et mero motu &c. doth not help it, alſo if the King recite, that whereas he had ſuch land by the attainder of I. S. where in truth he had it not by his attainder; now although that he grants this land Ex certa ſcientia, et mero motu, yet this will not paſs, but if the King be not deceived in the point of intitling himſelf, but in the deducing of his title, that will not prejudice the Patent, as if the King recite, that whereas I. S. had land by deſcent from his father, and he grants it to the King, and the King doth re-grant the ſame to I. S. this grant is good, notwithſtanding that I. S. had it not by deſcent from his father, ſee the Lord Lovels caſe in Plowden; that if the King be deceived only in the point of miſ-conveyance, the Law will not avoid the Patent, as if he grant to one and his heirs born at D. the laſt words are void, and the grant is good; Paſch. 42. Eliz. it was agreed, that if the King be Tenant for life or years, and makes a leaſe for one and twenty years, this leaſe is void to all intents againſt the King, becauſe it appears not in the grant, what eſtate the King had, and by that leaſe the King conceived, that he had power by his eſtate to make an abſolute leaſe, whereas legally his leaſe ought to determine by his death, ſo by implication it is manifeſt, that the King was not well inſtructed of his eſtate, 39. Eliz. the Queen leaſed for twenty one years, to begin whenſoever the land ſhould fall in poſſeſſion by the expiration of any former leaſe, then in being, if in that caſe there were no precedent leaſe then in being, this leaſe will be void, for theſe words implie, that the Queen conceived her former leaſe to be in being, and ſo impliedly ſhe is deceived in her intent, in like manner in the principal caſe the Queen was deceived in her intention, for the recital is, that all the eſtate which Potter had, is come to the Queen by ſurrender, and in truth all the eſtate is not come unto her, in reſpect of a mean eſtate to Wilkinſon; &c. as to the ſecond point, it ſeems the conſideration being, that he did aſſume to new build, implies aſmuch as if he had ſaid, he faithfully promiſed, and then it is all one as if it had been, for that that he ſhall build, for it is a conſideration executory, and is of value, and then the not performance thereof viciates the Patent, and the eſtate was, as if it had been by a limitation to ceaſe, and theſe words, that he did aſſume upon himſelf, cannot be conſtrued to any other intent, but unto an executory conſideration, becauſe the King hath no remedy by way of Action, for the breach of this promiſe, and it cannot be conceived, that the Covenant is ſatisfied in giving ſecuritie, for it is obſervable, that the Covenant is but the ordinary Covenant, viz. to repair, and keep repaired, and ſo a Trivial reparation will ſatisfie that, but it appears that the Queens intent was not to make the leaſe for ſuch a petty conſideration, becauſe the Leſſee had undertaken at his own charges to new build the Mills, but the expreſs Covenant doth not binde him to the new building of them, and in 6. Eliz. the like leaſe was made of the Mannor of Lidleſ-

Hill. 8. *Jacobi* in the *Exchequer*.

court

Hill. 8. *Jac.* in the *Exche-quer.*

court to Cuſtomer Smith, and the leaſe was for that, that he aſſumed, that he at his coſts would &c. and he avoided his leaſe upon a former leaſe made to A. of the premiſes, and in truth the leaſe formerly made to A. was meerly void upon the making of this leaſe, though peradventure the condition may be good, and the conſideration performed, but the Queen was not well inſtructed of her title; alſo in this caſe, the leaſe to Hitchmore is not determined by a condition, as it hath been objected, but it ceaſeth and is determined by a limitation, and this may well enough revest in the Queen, without entrie or office, becauſe it was but a Term, and ſuch words purporting an executory conſideration in the Queens caſe implies as much, as if in caſe of a Common perſon it had been ſaid expreſly to ceaſe upon an act not performed, for in the Kings caſe the Law ſpeaketh, and if ſo, then the leaſe for years is void, and the Patentee may enter without office, and all conſiderations executory in leaſes made by the King amount to a conditional limitation, and then he who will have benefit by ſuch a leaſe ought to aver the performance of the conſideration, as if a man declare upon a leaſe made unto him, &c. if *I.* S. ſhould ſo long live, he ought to aver his life in the Declaration, becauſe it determines, by limitation at his death, but otherwiſe it is upon a condition, if a Parſon make a leaſe for years, the Leſſee muſt aver the life of the Parſon, becauſe by his death the leaſe ends by a limitation implied, but otherwiſe it ſhould if it were upon condition, for the performance of that needs not be averred; but that ought to be ſhewed on the other part, and ſo it ſeemeth, that aswel for the point of falſitie in the recital, as alſo in the not performing of the conſideration, that the leaſe is void, and the Plaintiffe ſhould have judgement which was entred accordingly. *Snig*, Baron, was of opinion againſt all the other Barons, and he held that judgement ought to be given for the Defendant, for he ſaid, that the Patent made to Hitchmore proveth that it was not made by reaſon of any ſuggeſtion of the partie, for it is expreſſed to be made ex mero motu, &c. and then the not ſurrendring of the other Term doth not vitiate, alſo if the leaſe be forfeited to the Queen for not repairing, then the Queen ſhould have a title before the leaſe made to the contractors, under which the Plaintiffe claims, and that not being found by office, the contractors ſhall have no benefit thereof, and as to the caſes 9. H. 6. and Torringtons caſe cited Cook lib. 1. Altonwoods caſe, the words of the Patent which expreſs, that the Patent ſhould be good, ſo that it be not ad nocumentum &c. which is not in our caſe, doth not prove the caſe in queſtion; alſo if the conſideration be ſmal, and recited as executed, it doth vitiate the Patent although it be falſe, and it is ſaid in Sir Thomas Wrothes caſe in Plowden, that it is not honourable for the King to conſtrue his Patent to be void, by colour of deceipt upon an inference, except it be upon a manifeſt deceipt, and in Barwicks caſe Cook lib. 5. the conſideration was a ſurrender of all the eſtate, and therefore it differed from the caſe in 18. Eliz. Dyer, becauſe there it was in conſideration of an eſtate, which in truth was never in being, and the caſes whereupon he relied for the proofe of this matter is the principal caſe of Altonwoods, and the Lord Chandos caſe: that if a violent intendment might be admitted in the Kings grants upon an inference, it might be here inferred, that the King ſhould have the eſtate by this particular ſurrender, but the Book is reſolved, that no ſuch inference ſhall be admitted to avoid the Kings patent, or otherwiſe, but in that caſe of the Lord Chandos it appeared, that the information of the partie was true, and ſo it was not here, becauſe it was informed, that all the right which Potter had, is devolved to *Hitchmore*, which is not ſo, and therefore a difference between thoſe two caſes.

Nota, that the courſe of this Court is, that if A. be indebted, or be an accomptant to the King, and A. hath another debtor, which debtor hath a third perſon

perſon indebted unto him, in ſuch caſe A. may by Engliſh Bill in the Exchequer pray, that the eſtate of the debtor of his debtor, may be extended for the debt of the ſaid A. and it ſhall be granted. Paſch. 9. *Jac.* in the *Exchequer.*

Clerk againſt *Rutland.*

IN 6. Jac. in Ejectione firme, between *Clerk* and Rutland it appeared, that a feme ſole poſſeſſed of a Term of years, aſſigns this to A. in truſt, and after entermarries with him in reverſion, and after the husband being in quiet poſſeſſion, he and his wife joyn in a Bargaine and ſale to B. upon valueable conſideration, and after the wife dies, and the aſſignee doth ſet on foot the leaſe, and if this ſhall be void againſt the Bargainee was the queſtion upon evidence, and it ſeemeth not, becauſe the Bargainee claimeth nothing by conveyance from the wife, and alſo this truſt in the Term doth not belong to the husband after the death of the wife; for Tanfield ſaid, that it was decreed in the Chancery, and the opinion of the Judges was in one Denies caſe, if a feme ſole aſſign a leaſe in truſt, and after taketh husband, and dieth, that the adminiſtrator of the wife ſhould have this truſt, and that the Adminiſtration ſhall be granted for this Term, although there be no other thing for which the Adminiſtration ought to be granted: alſo it was touched in this caſe, that if the father make a leaſe for fortie years to a ſtranger, and continue in poſſeſſion, and after conveys the land to a younger ſon, who for a valuable conſideration conveyeth it over, it was doubted, if the purchaſor ſhould avoid this leaſe or not, but it was ſaid, that if in that caſe, the father after the making of ſuch a leaſe, had ſuffered the land to deſcend to his eldeſt ſon, who had been privie to this truſt, that then the Purchaſor of the eldeſt ſon ſhould avoid this leaſe, as it was ruled in Burwels caſe Cook lib. 6.

Upon a motion made by Prideaux, that Robert Winter one of the Powder Traitors made a leaſe for years 1. Jac. to one Gower, and that after 3. Jac. the Leſſor was attainted of Treaſon by Parliament, which attainder related to a time before the conveyance of the Fee, and if in this caſe the Term be ſaved or loſt it was the queſtion.

Wickham againſt *Wood* Paſch. 9. *Jac.* in the *Exchequer.*

EDward Wickham declared in an Ejectione firme, that Skreen 17. April 6. Jac. at Framlingham in Suffolk demiſed to him 30. Acres of paſture, to have for three years &c. and upon the general iſſue pleaded the Jury found, that Thomas *Cooper*, and three others were ſeiſed of the lands in queſtion, and the fifth of February 24. H. 8. infeoffed by Indenture M. B. and five others, to the uſes and intents mentioned in a Schedul annexed, and that was upon condition, that if they alienes to any other uſes or purpoſes, that the Feoffor ſhould re-enter, and the Jury alſo found the Schedule, which in effect was this, viz. that the Feoffees and their heirs, ſhould take the profits, and therewith finde an honeſt prieſt, by them or the greater number of them to be hired, and competently paid to ſay Maſs for the ſoules of the Feoffor and his friends, and that by the ſpace of 99. years then enſuing, and at the end of the ſaid years, the Feoffees their heirs and aſſigns, who then ſhould be ſeiſed, ſhould ſell the lands, and with the money finde a Prieſt, to Chaunt for the ſoules aforeſaid, and with the ſaid moneys or lands alſo, to

Paſch. 9. *Jac.* in the *Exchequer.*

make further proviſion for a competent poor honeſt Prieſt for the time being, (if then it could be) by a Amortization, or otherwiſe as they ſhould think beſt, for the ſure and long continuance of the ſaid honeſt Prieſt, if ſo it could be continued by order of Law, the Jury found all things executed accordingly, and the finding of a Prieſt from the 24th. of H. 8. untill the firſt of Ed. 6. by which Act the King was entituled prout lex poſtulat, and that Queen Eliz. granted to Mildmay for 21. years, upon whom Fuller, the heir of the ſurviving Feoffee entred, and made a Feofment to Wilbey and Skreen, by force whereof they were ſeiſed, and Mildmay re-entred, and his Term expiring, he obtained a new leaſe 43. Eliz. and made a leaſe to Wood, and Skreen ſurvived Wilbey, and made a leaſe to Wickham, who entred, and being outed by Wood brought this Action. Bromley puiſne Baron, upon all the matter I obſerve three things. Firſt, if the Feeſimple in this caſe by the letter or meaning of the Statute be given to the Crown, for the leaſe of 99. years is agreed to be given. Secondly, if there be ſuch an imployment of this land as the Statute requireth, admitting the leaſe was not given. Thirdly, if the livery upon the Queens Leſſee for years be good: and I hold that the Fee is not given to the Queen. Secondly, the land is not imployed, &c. admitting that it was given. Thirdly, that the Feofment here is not good; and as to the caſe at Bar the Feoffees may enter: I doubt not of that becauſe there is not any thing found, but that it was imployed to the uſes intended for 99. years. Secondly, if it were not imployed according to the condition, after 1. Ed. 6. yet they cannot enter, for themſelves were parties to the Act which did prohibit it, as 34. H. 8. Dyer 52. the Queen gives licence, that Belmelt ſhall be tranſported notwithſtanding any Statute made, or to be made, if after it be prohibited, the licence is determined, becauſe the Patentee himſelf was a partie to ſuch Statutes. Secondly, it is ſaid in Addams and Lamberts caſe, that a ſuperſtitious deviſe or other eſtate upon condition is within the Statute, becauſe the Patentee was partie thereunto. Thirdly, it is ſaid in the ſaid caſe, that a ſuperſtitious deviſe or other eſtate upon condition is within the Statute, becauſe it is penal, and compulſorie for the maintenance of a thing prohibited by the Law, and alſo there it is ſaid, that there is a proviſo towards the end of that Act, that it ſhall not be Lawful by reaſon of any remainder or condition for any man to claim any lands, &c. for the not doing, or finding of any ſuch Prieſt: as to the other point which was moved at Bar, I hold that the uſe doth not ariſe upon the words ſubſequent, and if they do not re-enter, that then the land ſhall go to the uſe of the four Feoffees, to the intent aforeſaid, is not a miſ-ordering nor an imployment. Secondly, theſe words to the intent, do not raiſe any uſe, but only a confidence and truſt repoſed in the Feoffees. Doctor and Student 94. for the firſt point therefore he held, that there is no ſuperſtitious gift of the Feeſimple, and if there were, it is not imployed &c. and therefore it is not given by the Statute of 1. Ed. 6. to the Queen: and touching that we are to conſider the Statute, Indenture, and the Schedule, and there is not a word, that after 99. years the land ſhall finde a Prieſt, but the money, and the land is not given, but the money, as in the Dean of Pauls caſe 22. Eliz. Dyer 368. if land be given to finde a Prieſt with part of the profits thereof, thoſe profits are only given to the King by this Statute, and not the land, but that belongs to the Dean and Chapter: alſo the Schedule is, if then it may be lawful, and therefore if it were not then lawful, the money is not given, and it is like to the caſe, where I make a leaſe for 21. years, if I do allow of it before Michaelmas, and before Michaelmas do not allow of it, this is a void leaſe, and ſo if I give land to the uſe of Weſtminſter School, if the Dean will enter into a Recognizance, &c. and if he will not enter into a Recognizance, it is no gift, like to the caſe 15, H. 7. a grant of Annuitie if ſuch a thing be done, &c. ſecondly, as to the imployment, the leaſe is only found to be imployed, and the imployment of the leaſe is no imployment of the Fee, which was not given until the Term was expired, and if the gift be not ſuperſti-

tious

tious the imployment ought not to be ſuperſtitious; and yet as it is ſaid in Adams caſe, there ought to be an imployment to intitle the Queen, as the caſe there is, if one gives the Mannor of D. and *S.* to ſuperſtitious uſes, the Queen ſhall have the lands out of the hands of the Feoffee, and if land be given to finde a Prieſt in the Church of D. for 20 years, and after to finde one in *S.* for 21. years, and before the expiration of the firſt Term, the Statute is made, it ſeems the Queen ſhall have only the firſt Term, becauſe there is no imployment of the ſecond Term within the Statute, 5. Ed. 4. 20. 15. Ed. 3. Execu. 63. I agree thoſe caſes, for land or rent iſſue from a ſeiſin 30. Ed. 3. 12. in a quare impedit 5. Ed. 6. Benlowes, a deviſe to 8. to the uſes and intent, that the Feoffees with the profits ſhall finde a Prieſt, whilſt the Law of this Realm will ſuffer it, and if the Law will not ſuffer it, then to the uſe of three of the pooreſt of the Pariſhes adjoyning, by all the Judges this is not within the Statute; and as to the laſt point it ſeems, that the Feofment is good, and the intereſt of the Queen is no impediment, which if it be not then there is no queſtion, as Dyer 20. Eliz. 363. Tenant in tail makes a feofment, the ſervants of the Leſſee for years being upon the land and livery is made, and after the Leſſee for years agrees ſaving his Term, this is a diſcontinuance 14. Ed. 4. 2, 3. and 4. Ph. et M. Dyer 139. poſſeſſion ſhall not be gained from the Queen, but by matter of Record 4. Aſſiſes 5. 21. Aſſiſes 2. 8. H. 4. 16. 1. H. 7. no livery upon the Kings poſſeſſion, it may be deviſed by the heir, or conveyed by bargain and ſale, or by fine from him, and the Kings eſtate in reverſion doth not privilege the eſtate in poſſeſſion, as it is 23. Ed. 3. 7. a diſſeiſor conveys land to the Queen who grants for life, and the diſſeiſee ſhall have a writ of entrie againſt the Queens Leſſee for life, by the opinion of Thorp, Cook lib. 4. 55. a diſſeiſor makes a leaſe for life, the remainder to the King, a recovery of the land againſt Tenant for life will defeat the Kings remainder, 7. Rich. 2. aide of the King 61. Tenant in tail grants the land to the King with warranty, and the King makes a leaſe for life, if the iſſue recover in a Formedon the Kings eſtate is defeated; and I was of Councel in the Court of wards, in a caſe which was Paſch. 43. Eliz. betwixt Chackſton and Starkey, for the Wardſhip of the heir of Clifford, and it was this, the Ward at full age tendred his livery, and had ſix moneths to ſue it, and within the ſix moneths made a Feofment, and after died before livery ſued, in this caſe the livery and ſeiſin was void, and it is all one as if no tender had been made, for the Queens poſſeſſion was privileged; the ſecond point was, that one being in Ward to the King, had a reverſion in Fee expectant upon an eſtate for life, and before livery ſued made a Feofment in Fee, this makes a diſcontinuance of the reverſion, notwithſtanding the Kings intereſt, which he had in reverſion for the Wardſhip, which caſe is like to the caſe above mentioned of a leaſe for years, and alſo it was there ſaid, that if Tenant for life be, the remainder to the King for years, the remainder to another in Fee, and the Tenant for life makes a Feofment in Fee, this drawes the Kings remainder out of him, and ſo be held, that here is no gift. Secondly, that here is no imployment, and ſo the Feofment is made good. Altham ſecond Baron contra, I will conſider only two points. Firſt, if it be a gift for years or for ever, and I ſay, that it is a gift for ever, for here is no intent in the Donor to determine the ſuperſtitious uſe, becauſe he doth not limit any other uſe to which it ſhould revert, but only that the Prieſt ſhould be maintained for ever, and as that which hath been ſaid, that it was not imployed, he anſwereth that out of the Book of 22. Aſſiſes 52. where 12. d. is reſerved for three years, and after 100. s. ſeiſin of 12. d. is ſeiſin of the 100. s. becauſe it is iſſuing out of the freehold, as the caſe is in Littleton in the Chapter of Attornment, Tenant for life, the remainder in Fee, the Lord ſhall not avow upon the remainder, but ſhall have it by way of Eſcheat, for all the eſtates together are holden of the Lord, but if land be given to finde a Prieſt in D. and one is maintained in S. this is a miſ-imployment; but in our caſe I conceive, that the Feoffees have power to diſpoſe the

Paſch. 9. *Jac.* in the *Exche-quer.*

Paſch. 9. *Jac.* in the *Exchequer.*

land, as to them ſeems beſt, and therefore it is uncertain, and then given to the King as it was in Dales caſe, land was given to the intent, that a Prieſt ſhould be maintained as I. S. and I. D. thought fit, ſo that he had not leſs then 8. marks yearly, the King ſhall have all, for the Feoffees may give all to the Prieſt if they pleaſe, and in Turners caſe, land was deviſed to a Prieſt, and divers poor men, all is given to the King by the ſuperſtitious imployment, and as to the words, (if by the Law it may be) they are idle, for id poſſumus quod de Jure poſſumus, and therefore 9. Ed. 6. an office was given to one if he were able to exerciſe it, theſe words are idle, for the Law ſaith, that he ſhall not have it, if he be not able to execute it, 30. Ed. 3. 8. a gift to two and to the longer liver of them, that the Survivor ſhall have it, are idle words, 10. H. 7. a Condition that &c. and here if the condition had been until an Act of Parliament prohibit it, they are Idle words, for if land be given to I. S. and his heirs, upon condition, that if he die without heirs &c. this is a void condition and Repugnant to Law. Laſtly, I hold the feofment good by way of Admittance, and that the livery takes effect, notwithſtanding the Queens intereſt 4. H. 6. 19. the Kings Tenant for life is diſſeiſed, he ſhall have an Aſſiſe, and yet there is no intruſion upon the King 17. H. 7. 6. the Kings Leſſee makes a feofment, the King enters, and ſo he held, that the judgement ſhould be given for the Defendant. Snig Baron argued much to the ſame intent, that Bromley had done, and that the Schedule is ſo circumſpect, that nothing is given after the 99. years, and that a ſpirit of Divination forwarned him of the alteration, and he agreed the Feofment to be good with this difference, where the King is in poſſeſſion actually, and where the Reverſion is in the King, and the book of 2 H. 4. 9. that none ſhall enter upon the Kings Farmor is to be underſtood of the Kings under Tenants, and not of his Leſſees. Tanfield chief Baron ſaid, that neither by the intent of the Statute, nor of the parties, the fee is given to the Queen, but it is apparant, that during the 99. years, the parties intent is in ſuſpence for fear of alteration, and that they would ſee the difference of the times, and leave the diſpoſing thereof to his Feoffees, and if they had ſold the land, and with the money maintained a Prieſt, as many ſtocks of money have uſed to do, without doubt it had been forfeited to the King, and not the land; and it would be in vain to ſpeak of an Amortization, if it be for a ſtipendary Prieſt only, for this would not be neceſſary to have a foundation incorporated, and to make an Amortization for ſuch a Prieſt, and therefore it ſeems to him, that there is no determination of his will after the 99. years, but that all is left to the determination and diſpoſition of the feoffees who then ſhould be, and after the intent of the Statute, which was penned by Hales Juſtice of the Common Pleas. I obſerve four words, given, appointed, limited, and aſſigned, and I do not conceive, that our caſe is within the compaſs of any of them, for as I ſaid before, it is in ſuſpence until the end of 99. years, and the parties who ſhould have the intereſt are not known until the time come, nor the eſtate ſetled until that time, but if it had been conveyed to ſuperſtitious uſes after, it had been given to the Queen, notwithſtanding the conveyance had not been ſufficient, if he who did convey had power in reſpect of the abilitie of his perſon, and the eſtate in him, and therefore Paſch. 22. Eliz. the caſe was this, Sir William Say, before the Statute of 32. H. 8. of Wills was ſeiſed of lands in fee not deviſable, and before the ſaid Statute he deviſed it to finde a Prieſt, and notwithſtanding that the deviſe was not good, yet it was adjudged, that the land was given to the Queen by 1. Ed. 6. but if it were a feme covert, or an infant, who are diſables in Law, or a Tenant in tail, who is diſabled in reſpect of his eſtate, there it had not been given to the Queeen, but in all caſes there ought to be an aſſignment, or otherwiſe nothing is given; and there is a difference where one grants land to the intent with the profits thereof to finde a Prieſt, there all the land is given to the Queen, and where he grants a rent for the maintenance of a Prieſt, for there the King ſhall have but the Rent;

and

and he ſaid, that the Caſe cited, 5. Ed. 6. Benlos, is good Law, and as to that which hath been ſaid: That becauſe the power of the Feoffees is uncertain, it ſhould be given to the Queen, true it is where the power is uncertain to beſtow the profits, but if their power be certain, it is otherwiſe, and as to the imployment there is none, becauſe there is no gift, but the imployment of the particular eſtate is an imployment of the Remainder, and a ſmall thing will make an imployment. James caſe was of the Greyhound in Fleetſtreet which was given to finde a Prieſt, and the White Horſe for the maintenance of another, and the Feoffees of the White-horſe, maintained the Prieſt of the Greyhound; and è converſò, and this was ruled to be an imployment, for it was whereby, or wherewith a Prieſt was maintained, although it was not whereof, and Mich. 21. Eliz. the Kings head in Breadſtreet, now Fiſhſtreet was given to finde a Prieſt, and a rent-charge granted in performance of the Will, and this was adjudged an imployment of the houſe, and ſo where the aſſignment is good, a ſmall thing will make an imployment. And it ſeems that the Liverie is good, and as to that, that no Livery can be made without ouſting of the Leſſor, and by his conſent, and therefore 9. Eliz. It is ruled, that a Feoffement with a Letter of Attorney to the Leſſee to make livery is good, and no ſurrender, and Eides and Knotsfords caſe, 41. Eliz. Leſſee for years, remainder for life, remainder in fee, he in remainder in fee makes a Feoffement to the Leſſee for years, and makes Livery, and it was adjudged a good Feoffement, becauſe it was not a ſurrender, in reſpect of the meane eſtate for life, and no ouſter nor conſent will ſerve, for then it would be a diſſeiſin, which cannot be upon the poſſeſſion of the Leſſee for years, for his poſſeſſion is alſo of him in the remainder for life, and I put theſe Caſes, that there ought to be a conſent or ouſter, but I agree that the Queens poſſeſſion cannot be defeated by entry or ouſter, as it is 4. Mar. Dyer 139. 8. Aſſ. 21. 18. H. 8. 16. But the Kings Ward may make an eſtate, 1. H. 7. But if the King be not in poſſeſſion, but a remainder only in him, and the Leſſor makes a Feoffement, rendring 12. d. rent, this eſtate in the King doth not priviledge any other in poſſeſſion, and ſo judgement was given for the Plaintiff againſt the opinion of Altham.

Paſch. 9. *Jac.* in the *Exchequer.*

Mrs *Chamberlains* caſe.

IN 22. Eliz. York recovered by Indictment in the Kings Bench againſt Allen upon an Aſſumpſit, York being thus increaſed of the debt, after that is in May, 26. Eliz. was outlawed upon a mean Proces at the ſuit of I. S. and in the ſame year and moneth was outlawed after judgement at the ſuit of the ſame I. S. and after a generall pardon came 27. Eliz. in which pardon, after the pardon of all contempts for outlawrie, there are words alſo purporting a Grant, bounty, and liberality, whereby the Queen granted all monies forfeited, or come unto her hands, by reaſon of any ſuch outlawry, with other words in the ſame pardon, and Proviſoes therein contained, neceſſary to be obſerved: And after in 28. El. York was outlawed again after judgement at the ſuit of I S. and then Yorke died, but he lived a full year after the pardon, 27. Eliz. and did not ſue any Scire facias againſt the party, at whoſe ſuit he was outlawed after Judgement; and after the death of Yorke another pardon came, 29. Eliz. to the ſame effect with the pardon in 27. And after the Queen grants this debt to Anger for the benefit of Mrs Chamberlain, who was the Wife of Yorke, and Anger ſued in the Queens name to have an extent, out of this Court againſt Allen, who was the party againſt whom Judgement was given, and all this was drawn into a Caſe, and delivered to the Barons of the Exchequer to conſider upon, viz. If execution may be ſued in the Queens name againſt Allen, and this caſe was argued at the Barre at which I was preſent; And now it was argued at the Bench by Bromley Puiſne Baron, and concluded that Anger may well ſue execution in the Queens name, but

Paſch. 9. *Jac.* in the *Exchequer.*

but he had almoſt made an end of his Argument before I came into the Court, and three points ſeemed to be conſidered of in the Caſe. The 1. was unanimouſly reſolved, and agreed by all the Barons, that either of the pardons will advantage Allen, who was debtor to the party outlawed, for although that the words of the pardon, import a pardon of all debts and ſums of money accrued to the Queen by reaſon of the outlawry, yet comparing all the parts of the pardons together, it will plainly appear, that the intent of the pardon was only for the advantage of him, who had committed the forfeiture by the contempt, and extends only to him by way of reſtitution; And another conſtruction would be repugnant to all the Cauſes contained in the Act; By Tanfield, as a Will ought to receive conſtruction by due conſideration of the intention of the Teſtator collected out of all the parts thereof, ſo the meaning of an Act of Parliament ought to be expounded by an examination of the intention of the makers thereof, collected out of all the cauſes thes therein, ſo that there be no repugnancy, but a concordancy in all the parts thereof, and therefore if a man by will deviſe B acre to A. and his heirs, and by another cauſe in the ſame Will he deviſes B acre to B. and his aſſignes, it ſhall not be void in any part, inſomuch that if both had been placed together, A. and B. ſhould be Joyntenants, and therefore the Law will make ſuch a conſtruction, and ſo if a man deviſe B. acre to A. and after he deviſes a Rent out of it to another, both ſhall ſtand: Brett and Rigdens caſe, Plowden, Alſo this Debt was due by Allen; 2. It was reſolved by Tanfield and Bromley, that Yorke ſhould take no advantage by the Pardon in 27. Eliz. to have his goods reſtored, which were forfeited by the outlawry after judgement, for by them all the Statute for the pardon of the outlawry after judgement was penned in ſuch a form, as it is but conditionall, for it is in effect provided, that the pardon ſhall not extend to the party outlawed after judgement untill he ſhall pay or agree with the party, at whoſe ſuit he was outlawed, and this payment ought to be in the Court, or in ſuch manner that the Court may be ſatisfied by the ſuing of a Scire facias, and an acknowledgement of the party at whoſe ſuit, &c. for a bare payment in the Country is not ſufficient; But when the party outlawed hath once lawfully ſatisfied the party, at whoſe ſuit he was outlawed, then the pardon will relate ab initio to avoid all intervenient matters, if the ſatisfaction be made in convenient time, and therefore if the King had granted the goods forfeited by outlawry after judgment meane between the pardon, and the ſuing of the *Scire facias*, yet if the party outlawed ſue this Scire facias within convenient time, the pardon ſhall have ſuch relation as it ſhall defeat the grant of the goods, and therefore Tanfield compared the words in the pardon of the outlawry after judgement to the words in the Statute of 27. H. 8. of inrolments, for there it is provided, that nothing ſhall paſſe by bargaine and Sale, except the Deed be inrolled within ſix moneths after, but if it be not inrolled, otherwiſe it is.

Beckets caſe.

R. B. ſeiſed of Lands in fee, 36. Eliz. levies a fine, &c. and declares the uſe to be to himſelf for life, and after to T. B. with power of revocation, and to limit new uſes, and if he revoke and not declare, then the uſe ſhall be to the uſe of himſelf for life, and after to Henry Becket with power in that indenture, alſo to reboke and limit new uſes, and that then the fine ſhall be to ſuch new uſes and no other, and after 42. Eliz. by a third Indenture he revoked the ſecond Indenture, and declared the uſe of the fine to be to the uſe of himſelf for life, and after to Hen. Becket in taile, the remainder to I. B. &c. R. B. dies, and T. B his brother, and heire is found a Recuſant, and the lands ſeiſed, and thereupon comes H. B. and ſhews the matter as above, and upon that the Kings Atturney demurreth:

reth: Bromley and Altham Barons, that the Declaration of the uſes made by the third Indenture was good, and he having power by the firſt to declare new uſes, may declare them with power of Revocation, for it is not meerly a power, but conjoyned with an intereſt, and therefore may be executed with a power of Revocation, and then when he by the third Indenture revokes the former uſes, now it is as if new uſes had been declared, and then he may declare uſes at any time after the Fine, as it appears by 4. Mar. Dyer 136. and Coke lib. 9. Downhams caſe, and in this caſe they did rely upon Diggs caſe Cooke lib. 1. where it is ſaid, that upon ſuch a Power, he can revoke but once, for that part, unleſſe he had a new power of Revocation of Uſes newly to be limited, whereby it is implyed, that if he had a new power to appoint new uſes, he may revoke them alſo. Snig Baron to the contrary, and ſaid, that he had not power to declare 3. ſeverall uſes, by the firſt contract, which ought to Authoriſe all the Declarations upon that Fine, and then the Revocation by the third Indenture is good, and the limitation void, and then it ſhall be to the uſe of R. B. and his heirs, and ſo by the death of R. B. it doth deſcend to T. B. the Recuſant, and alſo he ſaid, that ſuch an Indenture, to declare uſes upon uſes, was never made, and it would be miſchievous to declare infinite uſes upon uſes. Tanfield held, that the uſes in the ſecond Indenture ſtand unrevoked, and the new uſes in the third Indenture are void, and then H. B. ought to have the Land again out of the Kings hands. The power in the ſecond Indenture is, that he may revoke and limit new uſes, and that the Fine ſhall be to thoſe new uſes, and no others: and then if there be a Revocation, and no punctuall limitation, he had not purſued his Authority, for he ought to revoke and limit, and he cannot doe the one without the other: Alſo he ſaid, that after ſuch Revocation and limitation, the fine ſhall be to ſuch new uſes and no other, then if there be no new uſes well limited in the third Indenture, the former uſes ſhall ſtand void. Paſch. 9. *Jac.* in the *Exchequer*

Nota, it ſeemeth that if a man make a Feoffement and declare uſes, and reſerve a power to revoke them, without ſaying moe, he cannot revoke them, and limit new, for the uſe of the Fine being once declared by the Indenture, no other uſe can be averred or declared which is not warranted thereby, for he cannot declare the fine to be to new uſes, when it was once declared before, Cook lib. 2. 76. That no other uſe can be averred, then that in the conveyance, Cooke lib. 9, 10, 11. Although that the firſt uſes are determined, as if a man declare the uſe of a Fine, to be to one and his Heires upon condition, that he ſhall pay 40. l. &c. or untill he do ſuch an Act, if the firſt uſe be determined, the Fine cannot be otherwiſe declared to be to new uſes; And therefore it ſeemes that all the uſes which ſhall riſe out of the Fine, ought to ſpring from the firſt Indenture, which teſtifieth the certain intention of the parties in the leaving thereof, and then in the Caſe above, the ſecond Indenture and the limitation of new uſes thereby, are well warranted by the firſt Indenture, and in reſpect that this is not a naked power only, I conceive that they may be upon condition, or upon a power of Revocation to determine them; But the power to limit the third uſes by a third indenture after revocation of the ſecond uſes in the ſecond indenture, hath not any Warrant from the firſt Indenture, and without ſuch Warrant, there can be no Declaration of ſuch new uſes, which were not declared or authoriſed by the firſt Indenture, which Note, for it ſeems to be good Law.

FINIS.

AN EXACT

TABLE

of the Principall Matters contained in this

BOOKE.

A.

AN Action of falſe impriſonment for taking his wife in execution, ſhe appearing as a Feme ſole, 48,52

An Action upon the Caſe for conſpiring to outlaw a man in a wrong County, 49

Amerciament for a By-law, 55

An Action upon the Caſe where againſt a Servant for breach of truſt, much good matter, 65,66,67,68

Amerciament where well levied by the Sheriff, 74

Action by an Executor againſt a Sheriff in the *debet* and *detinet*, where good, 80,81

Authority in fact, and authority in Law abuſed, a difference, 90

Action for theſe words againſt I.S. ſpoken of the Plaintifs wife, ſhe would have cut her husbands throat, and did attempt to doe it, 98

C.

Cuſtome for Pirates goods if payable, 15

Coppyhold ſurrendred to the uſe of a younger Sonne, he can have no Action before admittance, 20

Churchwardens if elected by Veſtry-men, where good, and capable to purchaſe Lands, 21

Conſpiracy, *ſee* Action.

Collector of a fifteenth leviable upon one Townſhip, 65

Commiſſioners of inquiry, and their power, 83,84

D.

DEbt againſt the Sheriff for an eſcape, a good Caſe, 20
Diſtreſſe for a By-law upon the Kings Tenant, he muſt bring his Action in the Exchequer, 55
Deviſe to the wife until the iſſue accompliſh 18. years endeth not by death of the iſſue before, 56, 57
Decree where execution thereof may be ſtayed, 68,69

E.

ERror a Writ directed to an inferiour Court ought to be executed without fee paid or tendered, 16
Elegit the party who ſued it dieth, no *ſcire facias* for the Heire, 16
Equity where releviable in the Exchequer, 54
Eſtreats where they may be diſcharged for inſufficiency in the Indictment, or not mentioning the offence, 55
Eſtoppell in the Kings caſe, 65
Exception in a Grant, 69
Eſcape, a difference where cauſed by a reſcous, and where by the Sherif, or Bailif, 70,71
Executor *ſee* Action, 80,81
Erroneous judgement given in the Kings Mannor, reverſed in the Exchequer by Petition, 98

F.

A Feoffement to the uſe of the Husband and Wife for their lives, and after to the heirs of the body of the wife begotten by the Husband, what eſtate, 17
Firſt fruits ought to be paid before induction, 20
Forfeiture by Tenant for life by what Acts, 38
Forfeiture by a contempt for not returning upon a command by Privy Seale, and what, and how long the forfeiture continueth, an excellent Caſe, 42,43
Falſe impriſonment, *ſee* Action.
Fine, if void for uncertainty, 55
Where it ſhall be directed by the Covenant, ibid

G.

GRant of the King what ſhall be a good ſurrender thereof, 1
And what ſhall be a good conſideration therein, 4
Where ſuch a Grant is aided by 43. *Eliz.* cap. 1. ibid
Grant by the King of a reverſion, *nec non manerium de Skipton*, 39

I.

INformation upon 3. & 4. *E.* 6. for buying of Butter againſt two, and one found guilty, 19
An information againſt one for refuſing to pay Impoſt for Currants, a famous Caſe, 23
An information for ingroſſing 1000. quarters of Corne, one Defendant found of 700. only, 59
Informer where he ſhall have a moity upon 23. *Eliz.* but not upon 28. *Eliz.* againſt a Recuſant,

ſant, 60
Judgement muſt be paid before a debt to the King, 65
Judges if bound to take notice of a generall pardon, 71
Injunction to enjoy poſſeſſion no hindrance to him that claimeth Common therein, 95
Information of intruſiion into a Cloſe, and for aſportation of 9. Cart loads of wheat, between the 24. of *March*, and 1. of *October*, the Jury found him guilty of 3. loads the 24. of *March*, and dammages taxed for all, no judgement can be given for any part, 97,98
Indentures ſeverall, with ſeverall powers therein to declare uſes how to be expounded, 118, 119

K.

THe King where he may extend for outlawry after alienation, 20
The King where he may take without inrolment, and what Acts amounts to an inrolment, 31,& 35,& 60
The King, where he ſhall have his rent of the Aſſignee in truſt in the *Interim* before a reaſſignment made, 39
The King where he may extend a Term conveyed in truſt, 50, 51
The King ſhall not charge the ſucceſſors of a Biſhop for a ſubſidie, but the Executor or the heire, 51
The King, where he ſhall be ordered in equity to perform a truſt by an Engliſh Bill, 54
King, *ſee* Judgement, 65
King, what intereſt he hath by an outlawry, 83
King, where he ſhall have his debt of his Debtor, or Truſtee, 91
King, cannot diſtrain the Cattell of one Tenant in Common for the debt of the other, 96,97
King may charge the debtor of his debtors Debtor, 112, 113

L.

LIvery and ſeiſin of Lands in 2. Towns by Letter of Atturney countermanded by livery in one by the Leſſor himſelf, 97
Livery if it can be made upon the Queens Leſſee, 114

M.

A *Memorandum* in the Exchequer, and the operation thereof, 5
Miſnomer of a Corporation where it voids a Grant, 15,& 33
Miſtriall, and a *venire facias de novo* awarded, 68
Miſnomer of a Corporation, 35

N.

NOtice of an uſe, or promiſe maketh a man lyable to execute the ſame, 60
Notice, *ſee* Judges, 71
Notice of payment upon a condition ought to be given to an infant, 100,101

O.

Over of a Deed must be demanded the same Term in the Common Pleas, but otherwise in the Kings Bench, note the diversity, 39

Outlawry in *Northumberland* for a debt in *Durham*, if the King or the Bishop be intitled, 90

P.

PAtent of Denization, what words therein make it conditionall, 58,59

Patent where void for false recitall, or want of consideration, 75,76, and 108,109

Pleas before a Justice of *Nisi prius*, what allowable, and what not, 81, 82, 86

Plea discontinued for want of a day given, 89

A Parliament pardon (the debt being agreed withall) relates *ab initio*, 118

R.

A Remainder where contingent, 22

Rent, where it must be demanded, and where not, 56, 57

Record, what makes a double matter of Record to make the party sue by Petition, 58,59

Recusancie, *see* S.

Remitter in what cases, 93, 94, &c.

Recusant if chargable for lands bought in trust, and if seisible after his death, and if liable by 1. *Jacobi*, 104,105

S.

THe Statute of 43. *Eliz.* cap. 1. well expounded, 5, &c.

The Statute of 33. *H.* 8. cap. 39. well explained, 51

Simony in what Cases, and excellent matter thereof, 71,72,100

Statutes of 23. 28. *Eliz.* and 1. *Iacobi* expounded concerning Recusants, 91,92

Surrender where countermandable, 99

Statute of 1. *Ed.* 6. of Chantries and the meaning thereof amplie debated by the Barons, 113,114

T.

TIthes where due for Headland, 16

Tithes where discharged by unity of possession, 17

Traverse where good, 18

Trust where a Recusant convict is capable thereof, 39

Tithes, a prescription therein for the Kings Coppyholder, it must be tried in the Exchequer, 39

Trust where forfeitable, 54,55

The tenth according to the Statute leviable only upon part of the lands out of which &c 56

Tenorem placiti, or *Tenorem recordi*, as good as *Recordum prædictum*, 83

A trust in a Term by the Wife, belongs not to the Husband after her decease, 113

V.

USes where fraudulent against a Purchasor, 22

Venire facias de *Vicineto* of a forrest, 33

Vses, *see* Indentures, 118,119

A Catalogue of

LAVV BOOKES,

and ſuch as appertain to the

L A VV.

Aſhes Tables 2. Volumes Folio.
Aſhes Tables to *Cooks* Reports.
—*Epeciea* or table of equity.
——*Faſiculus Florum.*
Arguments on the Writ of *Habeas Corpus.*
Aſſiſe of Bread.
Atturnies Guide.
Atturney of the Common Pleas.

Brooks Abridgement.
——Readings on *Magna Charta.*
——Caſes.
——Reading on the Stat. of Limitations.
Boultons Juſtice.
Bulſtrodes Reports.
Bracton.
Brownlows Reports 2. parts.
——Pleadings in 2. parts.
——Judiciall Writs.
Lord *Bacons* Elements of the Law.
——Caſes of Treaſon.
——Ordinances.
——Reading of the Statute of Uſes.
Britton.
Book of Oaths.
Bellewes Reports of R. the 2d.
Blunts Gloſſographia expounding Terms of the Law.
Boones *Examen Legum Angliæ.*
Cooks Reports 11 parts *French.*
——12th Report Engliſh.
——Entries.
——on *Littleton* the firſt part of his Inſtitutes, 1.
——on *Magna Charta* 2.
——Pleas of the Crown, 3d.
——Juriſdiction of Courts 4th.
——Compleat Coppyholder.
——of Baile and Mainpriſe.
Cragge de Feudis.
Cuſtomes of *Normandie.*
Mr *Cooks* Vindication of the Law.
——*Pooremans Caſe.*
City Law.
Cromptons Juſtice.
——*Juriſdiction* of Courts.
Cowells Interpreter.
——Inſtitutes.
Calis Readings on Sewers.
—Ignoramus.
Crook and *Huttons* Arguments on Shipmoney.
Compleat Clerk and Scriveners Guide.
Calthrops Relation of Mannors and Coppyhold.

——Cases about the customes of *London*.
Conference about the liberty of the Subject.
Clerks *Vade Mecum* Presidents.
Clerks Guide in 2. parts.
Collins Summary of the Statutes.
Complcat Justice.
Caries Reports in Chancery.
Claytons Reports.
——Topick of the Law.
Compleat Atturney 2. parts.
Charter of *Rumney Marsh*.
Chancery Orders.
Court Leet.

Davis Reports.
——of *Impositions*.
——abridgement of Lord *Cooks* Reports.
Daltons Justice.
——Office of a Sherif.
——Abridged.
Dyers Reports.
——Abridgement in *French*.
——Abridgement in *English*.
Doderidges English Lawer.
——Principality of *Wales*.
——Compleat Parson.
Deggs proposals.
Declarations and Orders, 4°
Dr and Student in *Lattin*.
——*idem* in *English*.
——Abridged.
Davenports Abridgement of *Cook on Littleton*.
Deerehams Mannuall.
Dallison and *Benlowes* Reports, with *Ash*.

Edward the 3d. in 2. parts.
——*Quadragessimus*
——Assises of *Edward* 3d.
——Abridged.
Edward the 4th.
Elmesmores Post Nati.
——of the *Chancery*.
Edgars Charges.
Executors Office.

Fitzherberts Abridgement.
——Table to the same.
Fitzherberts Natura brevium *in French*.
——*idem* English.
——Justice.
——English.
Finches Law, French.
——English.
Fidels Presidents.
Fletacum Seldeni notis.
Fulbecks Parallels.
——Preparative to the study of the Law
Fruits of Pleadings.
Fortescu de Laudibus legum Angliæ.
Fillacers Office.
Fees of Courts.

Godbolts Reports.
Gouldsboroughs Reports.
Gregories Moot Book.
Grounds of the Law.
Greenwoods *Curia Comitatum Rediviua*.
Glanvill of the Law.
Grotius of the Law of War and peace.

Henry the 4th and 5th
Henry the 6th 2. parts.
——the 7th.
——abridged.
Hobarts Reports.
Huttons Reports.
Hackwells Liberty of the Subject.
——Passing of Bills.
Hughs Commentaries on Originall Writs.
——Parsons Law.
——Reports.
——Abridgement.
Hearns Law of Conveyances.

Hornes

Hornes Mirror of Justices in French.
—— *idem* in *English*.

Judge *Ienkins* Tracts of the Law.
Irelands abridgment of *Cooks* Reports
Judgements of the Upper Bench.
Instructions for the Court of Wards.

Keylweyes Reports with *Dallison* and *Benlows*.
Kitchin Court Leet in *French*.
——*idem* in English.

Lambarts Saxon Laws.
—— Justice.
—Perambulation of *Kent* with Cinque-ports.
—— Archeion.
—— Duties of Constables.
Long Quinto.
Liber Intrationum.
Linwoods Constitutions.
Lanes Reports in the Court of Exchequer.
Lawyers Logick.
Littletons Tenures French.
——in English.
Laymans Lawyer.
Leigh Law Terms.
Lees Wards and Liveries.
Layers duty of Constables.

Manwoods Forrest Laws.
Marches Reports.
—— Actions of slaunders 2. parts.
—— *Amicus Reipublicæ*.
Magna Charta.

Noyes Reports.
—— Maximes of the Law.
—— Compleat Lawyer.
Nusances.
Novæ Narrationes.

Ordinances of the Lord Protector.
Ordinances in Parliament.
Owens Reports.
Orders for the Poore.
Orders in Chancery.

Pultons Statutes.
—— Abridgement.
—— *De pace Regis*.
Plowdens Reports.
—— Abridgement.
—— Quæres.
Pophams Reports.
Powels Atturuyes Accademy.
—— Court Leet.
—— Repertory of Records.
—— Atturneys Almanack.
—— Search of Records.
Penall Statutes.
Perfect Conveyancer.
Perkins Law in French.
idem English.
Practice of the Chancery.
Presidents or Instruments.

Rastals Statutes at large 2. voll.
—— Abridgement.
—— Entries.
Register of Writs..
Rules of the Upper Bench.
—— Commons Pleas.
—— Chancery.
Ridlys view of the Civill Law.
Reformatio Legum Ecclesiast.

Scobels Collection of Acts and Ordinances.
Statutes of 16 th and 17 th. *Caroli*.

Statutes

Statutes of *Ireland* 2. Volumes.
Statham's Abridgement.
Scotch Laws 2. Volumes.
Sheppards Epitome of the Common and Statute Law.
—— Touchstone of Common assurances.
—— Marrow of the Law or the Faithfull Counsellor, 2. parts.
—— *Parsons* Guid, or the Law of Tythes.
—— Presidents *of* Presidents.
—— Justice of Peace:
—— Justices Clerks Cabinet Presidents
—— Office of Constables.
—— Court Keepers Guide.
—— County Courts.
—— Proposals for regulating the Law.
Spelmans Glossarie.
—— Constitutions.
Smalls Declarations.
Swinburne of Wills.
Speciall Law Cases.
Selden of Tythes.
—— Arguments about Liberty of the Subject.
—— Priviledges of the Barons in Parliament.
Sea-Lawes in 8°
Shearmans Estates Tayle.
Shipmoney.
Star-Chamber Case.
Stamfords Pleas of the Crown.
Skeine *verborum significat.*
Stones Readings on the Statute of Bankrupts.
Stiles Practicall Register.

Tenures of *Ireland.*
Table to *Edward* the 3d, second part
—— *Quadragesimus.*
—— to *Henry* the 6th.
—— to *Henry* the 7th.
—— to *Dyer.*

Three Readings *viz.* of Sir *James Dyer*, Serjeant *Brograve*, and Sir *Tho. Risden.*
Judge *Thorps* Charge.
Tothils Transactions in Chancery.
Treatise of Barons.
Tretmans abridgement of *Cooks* Reports
Theloalls Digest of Writs,
Terms of the Law,

Vernons Regulation of the Exchequer.

Winches Reports.
Wests Presidents, 2. parts.
Womans Lawyer.
Wisemans Law of Laws.
Wingates abridgement of the Statutes.
—— Body of the Law.
—— Summary of the Common Law.
—— *Statuta pacis.*
Wilkinsons Office of Sheriffs.
White of the praise of the Law.

Youngs Vade Mecum.

Zouch *Elementa juris-prudentiæ.*
—— *Iuris Fecialis.*
—— *Specimen Questionum.*
—— Questions and Cases Resolved.

Books Printed for, and ſold by GABRIEL BEDEL, & THOMAS COLLINS. 1656. (*Viz.*)

Books in *Folio.*

THE *Compleat Ambaſſador*, containing the Letters and Negotiations of Sir *Francis VValſingham*, the L. *Burleigh*, and other eminent perſons; being a perfect Series of the moſt remarkeable paſſages of State, both at home and abroade, in the Reign of Q. *Elizabeth* of bleſſed memory; collected by Sir *Dudly Diggs*.

The Hiſtory of the *Civil Wars of France*, written in Italian *by Henrico Catterino D'Avila*, the whole fifteen books; Tranſlated into Engliſh by Sir *Charles Cotterel*, and *VVilliam Aylesbury*.

Idem the *Continuation* alone, being ten books.

A compleat *Chronicle of England*; begun by *John Stowe*, and continued by *Edmund Howes* Gent. with an appendix of the Univerſities of *Eng.*

A French Engliſh Dictionary, with another in Engliſh & French, compiled by *Randal Cotgrave*, Gent. wherennto are added the Animadverſions, and Supplement of *James Howel* Eſq;

The Life and Reign of King Henry the VIII written by the Right Honourable *Edward* Lord *Herbert of Cherbury*.

Annales Veteris Teſtamenti, à prima Mundi Origine deducti, una cum rerum Aſiaticarum, & Ægyptiacarum chronico; à Temporis Hiſtorici Principio, uſque ad *Maccabaicorum* initia producto, *Jacobo Uſserio Armachano*, digeſtore.

Idem, *Secunda Pars*, uſque ad Imperii *Veſpaſiani* Initia, atque Extremum Templi, & Rei publicæ Judaicæ excidium deductum Authore *Jacobo Uſserio*.

Of Government and Obedience, as they ſtand directed and determined by Scripture and Reaſon; in four books, by *John Hall* of *Richmond*, Gent.

Daultons Countrey Juſtice, corrected and enlarged, by the Authors own hand before his death; unto which is Annexed, an Appendix or Abridgment of all the late Acts, and Ordinances that relate to the Office of a Juſtice of Peace, to the year 1655 by a Barreſter learned in the Laws.

I. Ragguagli Di Parnaſſo, or Advertiſements from Parnaſſus, in two Centuries: with the Politick Touch-ſtone; written Originally in Italian, by that famous Roman *Traiano Bocalini*, and now put into Engliſh by the Right Honourable *Henry* Earle of *Monmouth*.

The Hiſtory of Philoſophy, in eight parts, containing thoſe on whom the Attribute of Wiſe was conferred; with the pictures of ſeveral Philoſophers, by *Thomas Stanley* Eſq;

Hiſtorical Relations of the United Provinces of Flanders, containing the Natural conditions of the people, with the Forms of Government. With the *Compleat Hiſtory of the VVars of Flanders*, written in Italian, by the Learned and Famous Cardinal *Bentivoglio*, Engliſhed by the Right Honourable *Henry* Earle of *Monmouth*, the whole work Illuſtrated with many figures of the chief Perſonages mentioned in this Hiſtory.

Politick Diſcourſes; written in Italian by *Paolo Paruta* a Noble Venetian Cavalier, and Procurator of S. *Mark*. Whereunto is added, a ſhort Soliloquy, in which the Author briefly examins the whole courſe of his Life: Rendred into Engliſh by the right Honourable, *Henry* Earle of *Monmouth*.

Eadmeri Monachi Cantuarienſis, Hiſtoriæ Novorum Sive Sui ſeculi, res Geſtas ſub *Guilielm.* I & II. & *Henric.* I. Emiſit *Joannes Seldenus*.

Seldeni Mare clauſum, ſeu de dominio maris.

Notes and Illuſtrations on *Palæalbion*.

The Hiſtory of the Reign of King Henry the VII written by the Right Honourable *Francis* Lord *Verulam* Viſcount S. *Alban*; unto which is annexed a very uſeful Table.

Orlando Furioſo, in Engliſh Heroical verſe; Illuſtrated with Figures, with an Addition of Epigrams; by Sir *John Harrington*.

The *Marrow* of the French Tongue, by *John Woodroeph* Gent.

Pyrotechnia, or the Art of Fire works, with an addition of *Logarithmes*; by *John Babington*, Student in the Mathematicks.

Devotions upon certain *Feſtivals*, Piouſly, and Learnedly expreſt in Meditations, by that Accompliſht Gent. *William Auſten*, of *Lincolnes* Inn. Eſq;

Books in Copartnerſhip with *W. L.* and *D. P.*

A Collection of Acts in the year 1648, 1649, 1650, 1651. very uſeful, eſpecially for Juſtices of the Peace, and other officers, with ſeveral other Ordinances of like concernment, by *Henry Scobel* Eſq; Clark of the Parliament, and Clark of his Highneſſe Council.

A Collection of all thoſe Ordinances, Proclamations, Declarations, &c. which have been printed and publiſhed ſince the Government was eſtabliſhed in his Highneſs the Lord Protector, (viz) from Decemb. 16. 1653. unto Septemb. 3. 1654. with their ſeveral dates, and Dependencies, comprized in a leſſer volume then before, for the better uſe and benefit of the Reader, printed by his Highneſs Printer.

An